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SOCIAL PLANNING UNDER THE CONSTITUTION—A STUDY IN PERSPECTIVES*

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I

Our present discontents have evoked many earnest words on the subject of "social planning." We are told that "capital can be defended only by constructive programs based on the consideration of social responsibility;" that we are headed for "a frightful cataclysm" unless we adopt "a national plan that will control and guide the basic industries, govern the investment of capital, and keep purchasing power in step with production;" that if we are to avoid revolution, "we dare not sit indefinitely in contemplative inaction;" that "we require a leadership that will help us think less about the theories of individualism and more about the tragedies to individuals," inasmuch as "men cannot eat words . . . cannot wear words . . . cannot trust their old age to words."[1] In brief, if we are to avoid something worse, we must take some thought for the morrow.

There have, to be sure, been dissident voices too. One of these was raised at the recent Episcopal Convention at Denver. In a report submitted to this body occurred the following passage:

> And yet, side by side with such misery and idleness, there are warehouses bursting with goods which cannot be bought; elevators full of wheat, while bread lines haunt our cities; carefully protected machinery lying idle, while jobless men throng our streets; money in abundance

* Presidential address delivered before the American Political Science Association at its twenty-seventh annual meeting, Washington, D.C., December 28-30, 1931.

[1] For the above sentiments, see, in order, Dean Donham's *Business Adrift*, p. 101; *New York Times*, July 20, 1931, Professor Stuart Chase speaking; *ibid.*, June 3, President Butler speaking; *ibid.*, June 22, President Frank speaking.

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in the banks available at low rates. It is becoming increasingly evident that the conception of society as made up of autonomous independent individuals is as faulty from the point of view of economic realism as it is from the standpoint of Christian idealism. Our traditional philosophy of rugged individualism must be modified to meet the needs of a co-operative age.[2]

When this was read, that wise and good man who is best known to the world as the principal author of the Great Wickersham Mystery arose and made solemn protest. "I think," said he, "this is an expression of social philosophy that is expressed by the Soviet government of Russia. It is a negation of the whole concept of American civilization." It was thereupon explained to Mr. Wickersham that the sentences to which he objected had been culled largely from recent addresses by Mr. Gerard Swope and Mr. Owen D. Young.

Mr. Wickersham's objection to social planning is in substance the same as Mr. Hoover's: "The American way of life must be preserved." Others have urged the inherent difficulties of the task. "What folly!," exclaims former Secretary of the Treasury David F. Houston:

> What man or group of men in this country would know how to direct all, or many, of the leading activities of this great nation; and who is so innocent as to assume that, if they were to make a plan, our people would follow it, unless they could be made slaves? Certainly the federal government could not formulate or direct such a plan. It is none too successful in discharging its constitutional functions. It cannot even run a routine business like the Post-Office without a huge deficit.

Mr. Newton D. Baker is of the same persuasion. He doubts "whether there can be wisdom enough to plan an economic future for the United States," and adds, "progress is a function of freedom"—that is, presumably, freedom from social planning.[3]

Moreover, difficulty is a matter which is relative to character. So it is important to take into account Mr. J. T. Adams's suggestion that we Americans are not a planning race, having always taken the easier way of running away from our troubles. Hence he ventures to question whether it was the really capable Puritans who braved the Atlantic for New England's rockbound coast, hinting on the contrary that the best of the breed stayed at home, cut off King Charles's head, and eventually re-made the English constitution to their liking. And ever since then, Mr.

[2] *New York Times*, Sept. 29, 1931.

[3] Quoted by Professor Beard in his article in the *Forum*, July, 1931.

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Adams continues, instead of facing the difficulties and at the same time appropriating the richer cultural possibilities of a stabilized life at home, we have, as population became denser and social arrangements more intricate, raced off toward the frontier, with the result that now when the frontier has vanished we are at a loss what to do.[4]

The easy and obvious answer to all which is that plans *have been* offered. No less a personage than the President of the United States, despite his faith in "the American way of life," has offered two plans at different times. The earlier one, antedating the catastrophe of October, 1929, called "with the help of God" for the early abolition of poverty; the other, elaborated after that event and with outside assistance no longer available, demanded in its first item a twenty million increase in population during the next twenty years—the idea being no doubt to relieve the Federal Farm Board of some of its anxieties.

Nor have our business leaders failed us in this crisis. Their program is that buying should be stimulated, to which end wages should come down and railway rates go up; also the Sherman Act should be repealed or modified, and at the same time "government should get out of business"—that is to say, out of the business of trying to govern; furthermore, in order that social planning may have a certain idealistic cast, the American taxpayer should be permitted to manifest his natural humanitarianism by agreeing to cancel Europe's war debts to the United States, thereby putting speculative banking loans to Germany on a sounder basis; and that this display of altruism may be truly national, the income tax must not be increased as to the upper brackets. Lastly, but by no means least, that most un-American contrivance, the "dole," must at all costs be avoided—except of course in its American form of the protective tariff. Provided with such a program, we have only to mount the Business Cycle, and before we know it we shall be whisked back to the golden days of 1929, but with this difference—forewarned by what happened then, we shall all sell out at the peak of the market this time and be able to retire millionaires!

And with Business thus alert to its opportunity, the question necessarily arises, What part is Political Science prepared

[4] This, I take it, is the general purport of views advanced by Mr. Adams in his recent *Epic of America*.

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to take in social planning? The answer depends to some extent on what is meant by "social planning." When Charlie Chaplin met Mahatma Gandhi in London, he told him that he did not understand the reason for using such a crude device as Mr. Gandhi's hand spinning wheel when modern machinery seemed better for the purpose. Mr. Gandhi explained that it was necessary to provide occupation for India's millions and that modern machinery would leave them with too much leisure. "We might install modern looms like they have in Lancashire," he said, "but then we would produce more than we need and enforce idleness upon some other part of the world as a result of our overproduction."[5]

Of course, anything like social planning on the scale suggested by the Mahatma's words may be dismissed at the outset in the presence of "the American way of life." Despite Professor Einstein's warning that "anyone who thinks science is trying to make human life easier or more pleasant is utterly mistaken," that is just what we do think, especially when Science assumes the guise of Technology, in other words, enters the service of Business and profit-taking. So we remain blithe while the trucks and buses shove us off the highways and bankrupt the railways; we permit "the N.B.C. and associated stations" to turn over a major invention like the radio to crooning troubadours and purveyors of tooth-paste, thanking God the meanwhile that it has been kept free of "political control;" and we greet always with renewed enthusiasm any triumph of inventive genius whereby, we are assured, thousands of fresh recruits will be made available to the ranks of the unemployed.

No; with us social planning—in the probable absence from the scene of some miraculous combination of Confucius, Aristotle, Mussolini, Lenin, and a few others—must take place in the frame—or the "frame-up"—provided by Technology as above defined. It will, therefore, develop no grand strategy, nor reveal any considered theory of social arrangement and individual happiness. It will consist rather in desultory attacks upon what the Pragmatists delight to term "situations" and "predicaments." At that, its eventual rôle may not be unimportant if the habit be permitted to grow.

[5] *New York Times*, Sept. 23, 1931.

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And in this work the part of political scientists should also be important; provided they choose their tools and techniques for the task in hand rather than *vice versa,* and provided also they continue to talk intelligibly. Some recent articles in the REVIEW are hardly reassuring on the latter score.[6] They remind one of the plight of small Genevieve. "Yes," said the proud mother, "Genevieve is now in school and is studying French and algebra. Come and say good morning to the lady in algebra, Genevieve." When political science begins talking algebra, it will make no great practical difference whether the people who understand it do so or not.

II

It is a maxim approved of cooks that if you would make an omelet you must break some eggs. Mr. Owen D. Young has recently voiced his endorsement of this maxim in his remarks on Mr. Gerard Swope's plan:[7]

> May I say, Mr. President, that economic planning will contribute to a standardized and so more stable prosperity, but in the same breath may I remind you that, like all other things in this world, it demands its price. A plan written on paper is of no service. A plan proposed for education is of some service, but it is likely to become obsolete before it becomes effective. A plan to be productive of quick results must be executed promptly. No one concern can make it effective. Coöperation is required by the great majority of the participants and the coercion of the rest may ultimately be necessary. I hate not only the term but the idea of coercion, and yet we are forced to recognize that every advance in social organization requires the voluntary surrender of a certain amount of individual freedom by the majority and the ultimate coercion of the minority. It is not the coercion of the recalcitrant minority but the voluntary submission by the large majority which should impress us. Anyhow, the question is whether the people who are calling for economic planning really mean what they say. Are they willing to surrender their individual freedom to the extent necessary to execute a plan?

And again:

> We can retain in this country unorganized individual planning and operation, but if we do its action will necessarily be at times chaotic, and we shall, as a result, pay the economic penalty of that disorder, such as we are paying now. We can in this country have organized economic planning with some curtailment of individual freedom which, if the plan be wise and properly executed, will tend to diminish economic disorder and the penalties which we pay. Then too, the question is to whom

[6] I refer to my friend Professor Charles H. Titus's articles in the February and August, 1931, issues of this REVIEW.

[7] *New York Times,* Sept. 17, 1931.

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this individual freedom is to be surrendered? If the government is to undertake the great obligations which Mr. Swope's plan visualizes, then the price must be in the form of a surrender to political government. If industry itself is to perform those obligations, as is here contemplated, then the surrender of the individual units is to be made to the organized group, of which the unit is a part. If results are to be obtained, they call for surrender somewhere. The question for the public is to say whether they wish the results, and if so, by what agency they are to be accomplished.

While Mr. Young here holds out the possibility of Business setting its own house in order, he at the same time admits that there will always be recalcitrant minorities to be coerced. What is more, his expectation of the major part of Business seems a trifle optimistic, to say the least. The present depression is the fifteenth major depression of the past century, and no other—in the absence of that fillip to creative thinking which bears the label "Moscow"—seems to have suggested to either Business or Government anything more than hand to mouth expedients. What is more, no single important measure of the past forty years meant to correct business practices in the interest of a wider public can be pointed to which had the support of Business. The Interstate Commerce Act did not, the Sherman Act did not, the Federal Trade Commission did not, the Clayton Act did not, the Federal Reserve Act did not. On the contrary, Business presented in every one of these instances an almost solid front of opposition.

Any viable plan affecting business in an important way must unquestionably consult business experience, in other words, the experience of business men. With equal certainty, it must rely in part upon sanctions which only government can supply; and that means ordinarily, in view of the present structure of business, sanctions which only the national government can apply effectively. And so the question presents itself, What sanctions does the Constitution, that is to say, constitutional law, permit?

The present-day edifice of American constitutional law dates to an altogether unappreciated extent from this side of the year 1890, and so is fully a century younger than the Constitution itself; and especially is this true of those doctrines and principles concerning which the social planner needs feel special concern. These are not, in the main, the outgrowth of earlier precedents; more often they are the repudiation of them. They de-

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rive from a point of view which became dominant with the Court about 1890 and remained so for somewhat more than a decade and a half.

Never had "the American way of life" been in such peril as in the decade which is divided by the year 1890. The Federation of Labor, the Haymarket riots, the Chicago stockyards strike, the Homestead strike, the panic of 1893, "Coxey's army," the Pullman strike, "Free Silver," "Coin" Harvey, "Crown of Thorns and Cross of Gold," Altgeld, Pennoyer, "Bloody-Bridles" Wait, and so on and so forth; why continue? The country was in a state of riot, and, in the phraseology of the common law, "men of firm mind, with property in the neighborhood and women and children to protect," were alarmed.

To compensate, on the other hand, for this most distressing situation of fact, what may be termed the ideological situation was most reassuring to those to whom, in the contemporary words of the president of the Reading Railway, "God in His wisdom had confided the destinies of this great nation."[8] There was not a teacher of political economy of any reputation in the country who did not teach that economic activity was governed by laws of its own which, so long as government did not interfere with their operation, worked inevitably for human betterment. Then to back the teachings of the classical political economy was the lesson drawn from the current Darwinian biology. Evolution was a universal process which had all nature, including human nature, in its grip, and was tugging it along to some far off divine event willy-nilly. For evolution meant "the survival of the *fittest;*" only it must be *evolution,* that is, improvement by the slow accumulation of minute differences, not *revolution,* of which indeed the century had earlier had rather more than its fill.

So when Mr. Gladstone uttered his well-intentioned eulogy of the Constitution of the United States as "the greatest work ever struck off at a given time by the brain and purpose of man," the pundits assailed him from every side. "Brain and purpose of man"—a gross heresy! The American Constitution was only a copy of the British Constitution "with the monarchy left out," and the British Constitution was the superlative embodiment of political wisdom which it was because in sooth it embodied no

[8] See W. J. Ghent's contemporary *Our Benevolent Feudalism.*

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wisdom at all, being "a growth," "an accumulation." To consider the Constitution of 1789 as an instance of social planning was an utterly abhorrent notion to the generation of 1890.

But the mind which compacted the *laissez faire* political economy and biological evolutionism into a systematic philosophy was that of Herbert Spencer, whose *Social Statics* Mr. Justice Holmes once informed the Court, though unavailingly at the time, the Fourteenth Amendment was not intended to enact. There are few less humorous books in the language than Spencer's *Autobiography,* although this does not signify that it is entirely unamusing. Spencer's foible, along with omniscience, was originality, and indeed his claims on the latter score may usually be conceded. Educated in a haphazard fashion, he had developed something like genius for picking up information wherever he went and with whomever he conversed, and an equal genius, if so it should be termed, for combining facts and ideas into systems; whence Huxley's gibe that "Spencer's idea of a tragedy was a beautiful theory killed by an ugly fact." Had he been a mechanic, Spencer would have spent his days tinkering at perpetual motion; had he been a mathematician, he would have squared the circle, at least to his own satisfaction. Having, however, given his interest to social theory, or "Sociology," he did what was equivalent, reconciled—to his own satisfaction —the doctrine of natural rights, which he had imbibed in youth from the discourses of dissenting preachers, with the notion of society as an organism, an adoption and adaptation from the current Darwinism.

Society, being an organism, is, of course, subject to the evolutionary process, albeit in a manner somewhat peculiar. For the social organism, on examination, possesses two "organizations," the "nervous," which is the State or Government, and the "alimentary," or Industry. The former is "inferior," and therefore destined eventually to disappear through the operation of evolution on its constituent cells, that is, human beings, thus leading to increasing "individuation" and ultimately political anarchy. The evolution of the latter, on the other hand, is attended by progressive "integration of function" or "sympathy" among its cells, that is, these same human beings. So in the end the human family, pleasantly relieved of its nervous system, is absorbed into the social stomach, and along with this apotheosis universal

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peace and good will hold sway. In short, while political subordination is utterly antagonistic to the nature of man, economic subordination is not.[9]

Mr. Ernest Barker opines that Spencer is just the kind of political philosopher that England deserved, a statement which is not intended apparently to be especially complimentary to either of the parties mentioned. The apostle of Spencer to the American people—and a very fervent one—was John Fiske. Of Fiske, his rival, the historian Winsor, maliciously, and perhaps a bit enviously, declared that he was "the greatest of historians among philosophers and the greatest of philosophers among historians." And through Fiske or more directly, American judges and lawyers became indoctrinated with the Spencerian concept of "equal freedom," that is, "such measure of freedom for each as is compatible with the like freedom for all"—a conception which Mr. Al Capone would undoubtedly applaud, implying as it does, the right of anybody to become a gunman or racketeer so long as he refrains from "elbowing in" tactics.

At any rate, furnished with this endorsement of the "American way of life" as part and parcel of a universal, ineluctable, and all-beneficent process, "the naïf, simple-minded men" (the phrase is Justice Holmes's) who composed the Supreme Court of the years 1890 and following set to work, with the resolution which only consciousness of a righteous cause can lend, to remake our constitutional law, and within a decade and a half had succeeded in doing so with astonishing completeness.

III

In the history of the Supreme Court, two terms of Court stand out above all others for the significance of their results to American constitutional law, the February term of 1819, when McCulloch v. Maryland, Sturges v. Crowninshield, and Dartmouth College v. Woodward were decided; and the October term of 1894 when the Sugar Trust case, the Income Tax cases, and *In re* Debs were passed upon.[10] Nor would it be easy to conceive how three decisions could possibly have been more to the liking of Business than the three decisions last mentioned. In the Sugar

[9] See Ernest Barker's *Political Thought from Spencer to the Present Day* and Francis W. Coker's *Organismic Theories of the State.*

[10] 156 U. S. 1; 157 U. S. 429 and 158 U. S. 601; 158 U. S. 564.

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Trust case, the recently enacted Sherman Anti-Trust Act was put to rest for a decade, during which period Capital, fulfilling the Pauline injunction of "diligence in business, serving the Lord," made the most of its opportunities. In the Income Tax cases, the Court, undertaking to correct what it termed a "century of error," ruled that the wealth of the country was to be no longer subject to national taxation. At the same time, when the said wealth was menaced with physical violence, it was entitled, by the decision in the Debs case, to have every resource of the national executive and judicial power brought to its protection.

The so-called Sugar Trust was a combination of manufacturers which, the Court admitted, controlled a vast portion of the sugar market of the United States; and, as the Government pointed out, a manufacturer manufactures in order to sell his product, and in the case of a necessary of life like sugar the overwhelming proportion of the product will be sold outside the state where it is produced, and, if the concern is a monopoly, on terms dictated by it. The Court answered, nevertheless, that "this was no more than to say that trade and commerce served manufacture to fulfill its function!" Thus the very process which the Anti-Trust Act was designed to govern, namely, commerce in the etymological sense of "buying and selling," was assimilated to the local process of manufacturing—in short, was held not to exist. The result is the more striking in view of the fact that in the first case to arise under the commerce clause, Gibbons v. Ogden, the question at issue was whether "commerce" ever meant anything but buying and selling.

And so the law stood until the Swift case of 1905,[11] when the Court announced that it would no longer permit "a course of business" which was essentially interstate to be characterized by its intrastate incidents for the purpose of rendering national control of it ineffective. This holding, in which Justice Holmes spoke for the Court, injected new life into the Anti-Trust Act just as the second Roosevelt administration was getting under way. But meantime most of the damage had been done, and the Court so realized. In the Standard Oil and Tobacco cases[12] of 1912, Chief Justice White announced the famous "rule of reason," which is properly to be interpreted as an attempt on the

[11] 196 U. S. 375.

[12] 221 U. S. 1 and 106.

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part of the Court to effect a *modus vivendi* between the resuscitated Sherman Act and the existing structure of American Big Business for which the Court itself was so largely responsible. The act had been restored to the statute books, to be sure, but there must be no "running amuck" with it.

Even more remarkable was the Court's correction of a "century of error" in the Income Tax cases. An error so venerable ought, one would think, to have become entitled long since to be regarded as truth, not to mention the fact that the trail of this particular error led to the very doors of the body which framed the Constitution. This was the idea that the term "direct taxes" comprehended only land and poll taxes, having been inserted in the Constitution, not for the purpose of reducing materially the complete power of taxation which elsewhere in the Constitution had been conferred on the national government, but for the very limited purpose of reassuring the Southern slave-holders that their broad acres and slaves would not be subjected to land and poll taxes. And the Court was equally dashing in its encounters with the precepts of the Aristotelian logic. The Chief Justice's opinion for the Court comprised the contention that a tax on income which is derived from property must be regarded as a tax on said property, and *so as a direct tax on it,* although if words be given their "ordinary meaning," as the Chief Justice was scrupulous to insist, it would seem clearly evident that a tax burden which reaches property in consequence of being imposed upon income derived from it reaches the property *indirectly.*

But the decision has also its "inarticulate major premise," save that, thanks to Justice Field, it did not remain inarticulate. In the words of his concurring opinion, the income tax was "but a beginning" of "an assault upon capital" which was bound to spread until "our political contests will become a war of the poor upon the rich;" and while Justice Gray, the other of the two Nestors of the Bench, kept silent—indeed very much so—he reversed the opinions of a lifetime—"over night," as Mr. Bryan would have it—to help resist the assault *in principiis.* The school-boy who defined "property" as "what Socialists attack" had, it may be surmised, been reading the Income Tax decision.

And, while the regulatory and taxing powers centered in Congress were being thus seriously diminished, the protective powers centered in the President and the courts were undergoing a

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contrary process in the Debs case. Correcting another "century of error," the Court held in that case that the Executive has the prerogative right to enter the national courts independently of statutory authorization, and obtain an injunction to protect any widespread public interest of a proprietary nature, and to support the injunction with all requisite force. Should "the man on horseback" ever put in an appearance, he might well baptize his Bucephalus "In Re Debs."

Meantime, beginning with the first Minnesota Rate case, decided in 1890, our *laissez faire* Court had been struggling with the question of railway rate regulation, but did not achieve final results until Smyth v. Ames, seven years later.[13] The original theory of rate regulation was stated in 1876 in the great case of Munn v. Illinois,[14] while the Court was under the liberal presidency of Chief Justice Waite. It is to the effect that property embarked in a business which is "affected with a public interest"—a point subject ordinarily to legislative determination—is property which from the moment of its investment is "dedicated to a public use," and is therefore subject to the risk of regulation by and for the public. The theory underlying Smyth v. Ames is almost the exact antithesis of this. It is that a public regulation of charges is *pro tanto* an appropriation of property which up to that moment was *juris privati* only, a premise from which ensues almost mathematically the rule that rates which are set by public authority must yield a fair return on "the present value" of the property undergoing regulation. As is well known, this rule is the rock upon which, outside the jurisdiction of the Interstate Commerce Commission, all programs of public utility regulation have come to grief, and the only reason why it has not been a source of disaster in the national field is that there it has been largely ignored. The inability of the railroads, without the consent of the Interstate Commerce Commission, to boost rates in a situation in which rates, as today, are not yielding a "fair return" on railroad property can be reconciled with the doctrine of Smyth v. Ames only with the greatest difficulty, if at all.

But if Smyth v. Ames set up new restrictions on legislative power in control of business and property, by the same token it also enlarged judicial review in safeguard of those interests, and

[13] 134 U. S. 418; 169 U. S. 466. [14] 94 U. S. 113.

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the decision in Holden v. Hardy[15] in the same term of court did so even more strikingly. In this case the Court, following some earlier backing and filling with respect to the matter, finally discarded the rule laid down in Munn v. Illinois for the determination of cases arising under the due process clause, that "if a state of facts could exist justifying legislation, it must be presumed that they did exist," and gave unmistakable warning that it intended henceforth to require the state to show special justification in support of measures restrictive of the right of employers to make such terms as their economic advantage enabled them to in dealing with employees and those seeking employment, that is, so-called "freedom of contract." This time, it is true, the special justification was found in the special dangers of underground mining, and so an eight-hour law for such employments was sustained as "reasonable" and therefore due process of law. The implications of the case became explicit, however, when, seven years later, such special justification not being found to exist as regards the baking business, a ten-hour law for such employments was held void in the famous Lochner case.[16]

The truly miraculous effect of Smyth v. Ames and Holden v. Hardy upon the Court's power of judicial review is not open to question. Anterior to that time, thirty years under the Fourteenth Amendment had given rise to one hundred and thirty-four cases under all clauses of the amendment. In the course of the next fifteen years, more than three times as many cases were decided under the due process of law and equal protection clauses alone. The Court had become a third house of every legislature in the country, or, as Justice Brandeis has expressed it, a "super-legislature."

Two other closely related lines of doctrine in this period may be dismissed more briefly, although they are of great importance for the protection which in combination they afford "the American way of life." The first is illustrated by the "Liquor cases,"[17] in which the Court for the first time projected the commerce clause sharply into the field of the states' police power. In these cases it was held that, liquor being "a good article of commerce," the states could not forbid interstate traffic in it, a doc-

[15] 169 U. S. 366.
[16] 198 U. S. 45.
[17] 125 U. S. 465; 135 U. S. 100.

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trine which put the solution of the liquor question on a local basis out of the bounds of constitutional possibility, and so led finally to the Eighteenth Amendment, in somewhat the same way that the Dred Scott decision, by rendering a legislative solution of the slavery question constitutionally impossible, contributed to bring on the Civil War.

The other line of cases referred to was headed by the "Lottery case," Champion v. Ames.[18] In that case the Court, after three arguments, sustained, by a vote of five to four, an act of Congress excluding lottery tickets from interstate transportation, but did so on grounds which strongly implied that all efforts on the part of Congress to control concerns engaged in interstate business by the threat of stopping their interstate trade would be likely to be frustrated by the Court. The culmination of the course of reasoning adopted by the Court in Champion v. Ames is to be seen in the first Child Labor case, Hammer v. Dagenhart.[19] There Congress was informed that it could not prohibit the interstate transportation of child-made goods, since to do so would be to invade the police powers of the states; although by the Liquor cases just referred to any attempt by a state to do the same thing would amount to an invasion of the power of Congress to regulate interstate commerce.

Once again the Court was correcting a "century of error." That the power to regulate commerce comprises the power to prohibit it appears to the point of demonstration from the simple consideration that when prohibition is for any reason essential, it is the regulatory power which must provide it. And so it was assumed by the Federal Convention; otherwise, why the provision that the slave trade was not to be prohibited until 1808? As Judge Davis pointed out in the early case of the *William*,[20] growing out of Jefferson's embargo, this provision shows that "the national sovereignty" was thought to be authorized to abridge commerce "in favor of the great principles of humanity and justice," and for "other purposes of general policy and interest." Indeed, Hamilton in the *Federalist* had listed the commercial power as one of the powers which are vested in Congress "without any limitation whatsoever;" and Marshall's

[18] 188 U. S. 321.
[19] 247 U. S. 251.
[20] 28 Fed. Cas. No. 16,700.

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later consideration of the same subject in Gibbons v. Ogden[21] is to like effect: "The wisdom and discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied to secure them from its abuse."

The issue raised by the confrontation of these words with those of the Court in Champion v. Ames and Hammer v. Dagenhart is of the utmost importance from the point of view of any considerable program of social planning. As we have seen, planning means coercion for intransigent minorities—that at least—and if coercion is to be applied by the national government, it must usually be under the commerce clause.

I do not mean to suggest, however, that to Congress should be attributed an unconditional power over everybody's privilege of engaging in interstate commerce in all situations and for all purposes—that, for instance, of controlling marriage and divorce. What I do mean is that *all businesses whose operations extend beyond the boundary lines of a single state should be regarded as subject through their interstate commercial activities to the control of Congress fairly and reasonably exercised.* Commerce is business, and today business is dominated by its interstate characteristics—buying and selling across state lines, transportation across state lines, communication across state lines. So, in "the typical and actual course of events," even manufacturing becomes but a stage in the flow of the raw product to the mill and the out-flow of the finished product from the mill to the market; and while checking momentarily the current of interstate commerce, is at the same time, to adapt the words of Chief Justice Taft in Stafford v. Wallace,[22] "indispensable to its continuity." In short—to reverse the expression of the Court in the Sugar Trust case—manufacturing today serves trade and commerce to fulfil *their* function.

Over business thus organized the states are unable, in point both of law and of fact, to exert any effective control; nor would interstate compacts assist them materially in the attempt to do so if unaccompanied by extensive delegations of power from Congress. By Congress alone can the public interest which mod-

[21] 9 Wheat. 1.

[22] 258 U. S. 495. See also 262 U. S. 1.

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ern business purports to serve be safeguarded ordinarily, for it is the interest of the country as a whole.

IV

"What proximate test of excellence can be found," asks Justice Holmes in his essay on Montesquieu, "except correspondence to the actual equilibrium of forces in the community—that is, conformity to the wishes of the dominant power?" "Of course," he adds, "such conformity may lead to destruction, and it is desirable that the dominant power be wise. But, wise or not, the proximate test of good government is that the dominant power have its way." Hence, "the true science of the law," as he elsewhere remarks, "consists in the establishment of its postulates from within upon accurately measured social desires"—a point for our statisticians.[23]

Justice Holmes brought his pragmatic outlook—perhaps it should be spelled with a capital "P"—to the Bench in December, 1902, although it was some years before its leaven began to affect perceptibly the heavy theological Spencerianism of that tribunal. Indeed, his opinion in the Swift case is the first clear assertion of the new point of view. And to his Pragmatism—wherein he was the teacher rather than the disciple of his fellow Cantabrigian, William James—Holmes the legal philosopher added the contribution of Holmes the historian of the Common Law—the discovery, revolutionary at the time, that the judges are not the mere automata of established rules of law, but are law-makers, whether they would be or not, and so must accept responsibility for the kind of law they make.

And yet—and this is the third point in the Holmesian credo—the traditions of their office should inspire judges with a certain aloofness toward the issues of the day. They should endeavor to look at things *sub specie quasi aeternitatis*, so to speak, and not be in a bustle to align themselves with either "the dominant forces of society" or the contrary forces. They should, indeed, let such forces have a fair field, and only come in at the end when their craftsmanship is needed to record the terms of settlement.

"It is a misfortune," he once asserted, with both our constitutional law and our common law in mind, "if a judge reads his conscious or

[23] *Collected Legal Papers*, pp. 224-26 and 258.

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unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his countrymen to be wrong. . . . When twenty years ago a vague terror went over the earth and the word Socialism began to be heard, I thought and still think that fear was translated into doctrines that had no place in the Constitution or the common law. Judges are apt to be naïf, simple-minded men, and they need something of Mephistopheles.''[24]

Thus Justice Holmes became the mouthpiece on the Bench of a new gospel of *laissez faire,* namely, of *laissez faire* for legislative power, because legislative power is, or under the democratic dispensation ought to be, the voice of ''the dominant power'' of society.

At about the same time, moreover, the Court was also introduced to a new technique in the weighing of constitutional issues. This occurred when Mr. Louis D. Brandeis handed the Court, in defense of an Oregon statute limiting the working hours of women,[25] his famous brief, three pages of which were devoted to a statement of the constitutional principles involved and 113 pages of which were devoted to the presentation of facts and statistics, backed by scientific authorities, to show the evil effects of too long hours on women, ''the mothers of the race.'' The act was sustained, Justice Brewer, the arch-conservative of the Court, delivering the opinion. And the work thus begun by Attorney Brandeis has been continued by Justice Brandeis. The Court's function, under the due process of law clause, he has defined as that of determining the reasonableness of legislation ''in the light of all facts which may enrich our knowledge and enlarge our understanding.''[26] Indeed, this technique has imparted a new flexibility to the concepts of constitutional law in almost every one of its more important departments, and to have given it scope is the really valuable aspect of the modern doctrine of due process of law.

For our purposes, no detailed consideration of the work of the Court from 1905 to 1920 is essential. In the field of state legislation, the outstanding achievement was workmen's compensation; in that of national legislation, it was the reconstitution of the Interstate Commerce Commission and the immense

[24] *Ibid.,* p. 295.
[25] Muller v. Ore., 208 U. S. 412.
[26] 264 U. S. 504, 534.

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augmentation of its powers, and in both instances the Court lent a helpful hand. A few dicta of the period are, however, so much to our purpose as to warrant quotation, notwithstanding limitations of time and space.

Speaking for the Court in the Workmen's Compensation cases, Justice Pitney hinted the premise of a much more comprehensive scheme of social insurance, characterizing the worker as "the soldier of industry" and industry as "the joint enterprise" of capital and labor.[27] Voicing the Court's approval of an act of Kansas regulating insurance rates, Justice McKenna protested "against that conservatism of the mind which puts to question every new act of regulating legislation and regards the legislation as invalid or dangerous until it has become familiar." In the face of this, said he, "government—state and national—has pressed on in the general welfare and our reports are full of cases where in instance after instance the exercise of regulation was resisted and yet sustained against attacks asserted to be justified by the Constitution of the United States. The dread of the moment having passed, no one is now heard to say that rights were restrained or their constitutional guarantees impaired."[28]

To the same Justice must also be credited a notable statement, in support of the White Slave Act, of the concept of coöperative federalism: "Our dual form of government has its perplexities, state and nation having different spheres of jurisdiction . . . but it must be kept in mind that we are one people; and the powers preserved to the states and those conferred on the nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral"[29]—a sentiment which, unfortunately, precisely one-half of one Justice too many was to forget or ignore when it came to deciding the first Child Labor case.

To the same period also belong the memorable words of Justice Holmes in sustaining the migratory game treaty with Canada:

> When we are dealing with words that are also a constituent act like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been forseen completely by the most gifted of its begettors. It was enough

[27] 243 U. S. 188 and 219.
[28] 233 U. S. 389.
[29] 227 U. S. 308.

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for them to realize or to hope that they had created an organism. . . . The case before us must be considered in the light of our whole experience and not merely in the light of what was said a hundred years ago.[30]

Such statements evidence an inclination of mind, and one never can tell of what value they may be in imparting to a puzzled Court the same favorable inclination again.

V

Chief Justice White's presidency of the Court was, therefore, in the main, one of the expansive views of governmental power, although not always; Chief Justice Taft's period, on the other hand, was one, frequently, of reaction toward earlier concepts, sometimes indeed of their exaggeration. Yet even when the more advanced positions of the earlier period were later relinquished, they were not therefore obliterated. In the corporate memory of Bench and Bar and Jurists—to say nothing of the dissents of Justices Holmes and Brandeis, reinforced later on by Justice Stone—they still survive as *points d'appui* for the Court of today and tomorrow.

The *chef d'oeuvre* of the Taft Court was its decision in the Minimum Wage case, to which the Chief Justice himself dissented.[31] In the course of the war with Germany, the Court had sustained several measures, both state and national, on the ground that they met an existing emergency. From this circumstance the new membership of the Court proceeded to draw the rather questionable conclusion that an emergency must be forthcoming to justify even legislation designed to remedy long-standing conditions; and naturally in an era of "return to normalcy" a justifying emergency was often hard to produce.

For the rest, the Court's disposition of the Minimum Wage case reduces to this: that whatever might be urged on behalf of the statute on the score of the public interest involved or of widespread popular approval, inasmuch as it invaded fundamental property rights, it was null and void. Incontestably this is a position for which much may be said on historical grounds. The doctrine of vested rights, as applied in a number of the state courts before the Civil War, was to the general effect that the property right was subject to regulation primarily for the purpose of mak-

[30] 252 U. S. 416. [31] 261 U. S. 525.

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ing the subject-matter of the right more secure in the hands of the owner and more useful to him in the long run; if the state wished to venture beyond this, it must employ the power of eminent domain. But the property right then thought of was, for the most part, a right of direct control over definite, tangible *things* and belonged to natural *persons,* parties to the social contract and endowed with the inalienable rights of man. Today the ownership of the vast proportion of the wealth of the country, probably of all of it of which the social planner would have to take account, is vested in corporations; and a corporation, in the language of that notable conservative, Justice Brewer, "while by fiction of law recognized for some purposes as a person . . . is not endowed with the inalienable rights of a natural person."[32]

Ownership, in a word, has become *depersonalized;* and this signifies, so far as the individual owner is concerned, a transference of control over his property which, were it to government, would amount to outright confiscation. When this Association was in session in Cleveland last year, we all had the opportunity of reading in the Cleveland papers of the outcome of a suit between the Bethlehem Steel Corporation and the Youngstown Sheet and Tube Company. From testimony taken in this litigation it transpired that the Bethlehem Steel directors had presented its executives, including several of said directors, nearly thirty-two millions of dollars during a period when dividends to the holders of common stock totalled less than forty-one millions; that indeed during the years 1925 to 1928 inclusive, when not a dollar was paid to the common stock holders, nearly seven millions of dollars had been paid to ten or a dozen favored executives and directors. A few months later a suit was brought in the New Jersey chancery court by certain stockholders to force an accounting from the bonus-grabbing directors and executives, and in passing on a preliminary phase of the suit the vice-chancellor said: "The administration of the bonus system has been sedulously suppressed from the stockholders, the result only coming to their notice recently." The defense of the bonus system was undertaken by Mr. Schwab, who assumed full responsibility for it. With his customary *suavity,* he declared: "I had the feeling that this damn company belonged to me, you know,

[32] 193 U. S. 197, 362.

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and I went ahead and did the best I could." In point of fact, the books of the company showed that Mr. Schwab owned no common stock at all, but that his sole stock interest comprised forty-three thousand eight hundred sixty-six shares of preferred stock. The bonus system continues, nevertheless, although on a reduced scale. Nor is the principle which this parable illustrates at all obscure or recondite. It is phrased in a recent Supreme Court opinion in the following words: "The corporation is a person and its ownership is a non-conductor that makes it impossible to attribute an interest in its property to its members."[33]

But not only has ownership become depersonalized through absorption of its active elements into the rapidly expanding prerogatives of corporation management; property of all kinds has, as it were, become *dematerialized,* by which I mean merely that economic value is today a function of social arrangement as never before, so that when social process falters, value simply takes to itself wings. Within the last twenty-seven months, it has been estimated, anywhere between one-half and two-thirds of the "property," so-called, in this country has simply evaporated. The circumstance is of too impressive dimensions to leave constitutional theory respecting the property right unaffected. Nor should we overlook the concessions which the Court itself has made in recent years to governmental power in times of emergency—emergency being just what life nowadays "ain't nothing but."[34]

The truth is that even judicial conservatism is not always obdurate to ideas of social planning. The same Court which decided the Minimum Wage case, speaking through the same Justice, upheld, in Euclid v. Ambler Realty Company,[35] a zoning ordinance which the company asserted would reduce the market value of land owned by it from ten thousand to twenty-five hundred dollars per acre. "A belief, no matter how fervently or widely entertained, that municipal authorities can assert some sort of communal control over privately owned land," said counsel "is at variance with the fundamental nature of private ownership;" to which the Court responded: "The constantly increasing den-

[33] 282 U. S. 19.

[34] 243 U. S. 332; 252 U. S. 135 and 170.

[35] 272 U. S. 365. See also 254 U. S. 300, sustaining a "conservation" statute; also 260 U. S. 393, both opinions.

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sity of our urban populations, the multiplying forms of industry and the growing complexity of our civilization make it necessary for the state . . . . . to limit individual activities to a greater extent than formerly." Ownership, then, is not something static but an *activity,* and one that must be adjusted to other activities.

And in the meantime the same Court had endorsed a definition of "liberty" under the Fifth and Fourteenth Amendments the logical possibilities of which are at least challenging. In Holden v. Hardy and the Lochner case, "liberty" was defined as "liberty of contract"—a necessary adjunct, to the mind of a *laissez faire* Court, of the property right. Recent cases, however, bring within its protection freedom of speech and of the press; and if these, why not other comparable interests?[36] *The day may come, in other words, when the Court will treat the term "liberty" as itself embodying constitutional recognition of the entire range of those personal and humane values which enlightened social legislation is designed to promote.*

The Child Labor Tax case,[37] also decided by the Taft Court, merits a briefer word. Like the earlier Child Labor case, it proceeds on the assumption that the Court has a special mandate from the Constitution to refrigerate the distribution of power between the states and the national government as it exists at any particular time—in other words, a mandate to stereotype the so-called "federal equilibrium." Obfuscated by its sense of mission, the Court adopted in both these cases the very procedure against which Marshall protests in Gibbons v. Ogden. "In support of a theory not to be found in the Constitution," they denied "the government powers which the words of the grant, as usually understood, import."

Such a procedure indicates a serious misapprehension on the part of the Court of certain realities. It is by no means the case that any extension of national power into fields which were once occupied solely by the states necessarily spells a weakening of state power. One of the most evident extensions of national power within recent years is that which takes the form of so-called "federal grants-in-aid," and far from having proved annihilative of state power, these have generally proved stimu-

[36] 283 U. S. 697, and cases there cited. [37] 259 U. S. 20.

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lative of it—rather too much so in some instances. Indeed, it may be said broadly that under modern conditions more power to the national government means more actually effective power to the states, the cause of effective government being confronted by the same hostile interests in both fields. Nor have our administrators overlooked this fact, with the result that a man can hardly commit murder in either Chicago or New York these days without having his income tax record ransacked by the federal authorities. There may still be cases, no doubt, in which the aggrandizement of national power may be justifiably regarded as taking place at the expense of the states; but even in such cases the question remains whether, with industry and crime both organized on the national scale that they are, the state can make efficacious use of its theoretical powers. If the answer is no, then such powers are to all honest intents and purposes non-existent, and a realistic jurisprudence will so adjudge them.

VI

What is the Court's outlook today—its cosmology? Fortunately, the preachments of our present-day scientific pontiffs are quite incapable of impelling the thought even of "naïf, simple-minded" men along a single track as did Laissez Faireism backed by Evolutionism, backed in turn by belief in a benevolent Unknown. Today, the biologist and sociologist have had to yield place to the physicist and mathematician, and while these gentlemen are generally in agreement that God too is a mathematician, at that point consensus ceases. "Eddington deduces religion," Lord Russell points out, "from the fact that atoms do not obey the laws of mathematics; Jeans deduces it from the fact that they do."[38] On another point, however, Jeans and Eddington find themselves in alliance once more, namely, in assertion of the second law of thermodynamics, which says that the universe is running down, whereupon Professor Millikan protests that they have evidently overlooked the restorative properties of cosmic rays. Then there is the interesting question whether the universe is a sort of four dimensional (at latest reports, five dimensional) bird cage or a species of toy balloon in process of rapid inflation; also, assuming it is the latter, just

[38] *The Scientific Outlook* (1931).

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how long it will be until the final inevitable catastrophe? Six hundred thousand millions of years, avers Professor Jeans; ten thousand millions of years, asserts Professor Eddington. In either event, there ought to be time to try out some sort of social plan—even perhaps to give the "experiment noble in intention" a fair chance!

Nor must the lesson of "relativity" be overlooked in this connection. Suppose a judge to learn that by "the Fitzgerald principle of contraction" he is actually a smaller man when he is driving sixty miles an hour than when he is standing still, instead of being a bigger one as he had felt himself to be—is such a one likely henceforth to hold that doctrines laid down by the Court even so long ago as 1900 were laid down for all time? Nor could he fail to be edified by what has happened to Professor Einstein's one absolute, the speed of light. Queries a critic, at what speed then would two rays of light proceeding in opposite directions pass each other?—a question still unanswered.[39]

The truth of the matter seems to be that modern science throws man back on his own resources once more. Law, even in the scientific sense, is held to be a creation of the human mind, rather than a datum conferred by a benevolent Providence; it is an instrument of human power and control, as is the human mind itself. To be sure, the idea is one which might easily be misapplied. For instance, I should hesitate to advise anyone that either Einstein or Planck has so far repealed Newton that one can step off a roof into mid-air with complete impunity. But the point remains, nevertheless, that what measure of Utopia we are destined for—and it is probably a very modest measure—must be of our own contrivance. We are no longer headed for Heaven in a perambulator labeled Evolution, *Laissez Faire,* or any other uncomprehended force. If we get there, it will be on our own power.[40]

[39] James Mackaye, in *The Dynamic Universe.*

[40] "Nature does not obey definite physical laws and physical laws are not sufficient to determine the future of any object, living or not living. This question is vital to mankind for the reason, first urged strongly by Socrates, that if man's actions are determined by physical law, his motives and purposes are ineffective and life becomes meaningless. . . . . It thus becomes possible, in light of modern science, to see once more the vision that Plato saw, of man as master of his own destiny." Professor Arthur H. Compton, Address before the National Academy of Sciences, *New York Times,* Novem-

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Although only passing notice requires to be given to the recently constituted Court, a necessary preface thereto is a further word of acknowledgment of that series of dissenting opinions, often brilliant, in which between the years 1920 and 1930 Justices Holmes and Brandeis, and more recently Justice Stone, kept the spark of life in the *Corpus Juris* of the decade preceding. Nor was this the only result of their inspired obstinacy. The public—or that portion of it which counts in such matters—was at last advised of the necessity of scrutinizing the philosophy of life no less than the professional attainments of a nominee to the Supreme Bench. The Senate debates over the nomination of Judge Parker and of Chief Justice Hughes demonstrated that.

Already the Court, under the able leadership of Chief Justice Hughes—who was also, it should be recalled, a member of the Court in the fruitful years immediately following 1910—has recovered an important segment of lost territory. In the Indiana Chain Stores case, the autonomy of state legislative power under the Fourteenth Amendment was asserted in what, from some angles, was a rather extreme case. In the New Jersey Insurance Commission case, the Court returned once more to the general outlook of Munn v. Illinois regarding price regulation. In other cases a check was at last given to the vastly exaggerated principle of tax exemption and hints thrown out that may lead eventually to a radical revision of the entire doctrine.[41]

The present "liberal" majority of the Court is, to be sure, a narrow and precarious one. But this very fact should serve to drive home the lesson of the importance of having judges of broad experience and outlook, and so to emphasize the responsibility of the President for proposing such men and of the Senate for seeing to it that only such men are finally approved.

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ber 22, 1931. On the other hand, both Einstein and Planck continue to assert the mechanical nature of the universe. Says the latter in his *Universe in the Light of Modern Science,* recently translated from the German, "All studies dealing with the behavior of the human mind are equally [that is, with physics] compelled to assume the existence of strict causality." Professor C. G. Darwin, of the University of Edinburgh, a grandson of Charles Darwin, also offers "a most strenuous opposition" to the idea that "the new outlook will remove the well-known philosophical conflict between the doctrines of free-will and determinism. . . . . The question is a philosophic one outside the region of thought of physics, and I cannot see that physical theory provides any new loop-hole." *New York Times,* Dec. 14, 1931.

[41] 283 U. S. 527; 282 U. S. 251; 282 U. S. 216 and 379.

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Pertinent in this connection are the words of Mr. Justice Brandeis, then plain Mr. Brandeis:

> I see no need to amend our Constitution. It has not lost its capacity for expansion to meet new conditions, unless it be interpreted by rigid minds which have no such capacity. Instead of amending the Constitution, I would amend men's economic and social ideas. . . . Law has always been a narrowing, conservatising profession. . . . What we must do in America is not to attack our judges but to educate them.[42]

Or, harking back some two hundred and fifty years, we may recall the words of Lord Halifax, spoken with reference to the English Constitution: "The Constitution cannot make itself; somebody made it, not at once but at several times. It is alterable; and by that draweth nearer Perfection; and without suiting itself to differing Times and Circumstances, it could not live. Its Life is prolonged by changing seasonably the several Parts of it at several Times."[43] Whereto it needs only be added that the body whose task it is to keep the Constitution of the United States adjusted to time and circumstance, that is to say, *alive,* is ordinarily the Supreme Court.

Are we at the beginning of an epoch or in the midst of an episode? Hardly the latter merely. The forces which brought about the present crisis will still remain after it has passed away—assuming it ever does pass away—and will be potent, if not curbed, to produce similar crises again. Individual initiative may be, as my old teacher Charles Horton Cooley was wont to assert, "the life-giving principle of institutions." Unfortunately, that form of individual initiative which is called forth by the profit-taking motive—"the American way of life"—does not invariably work for the good of society as a whole; although if democracy means anything, it is precisely that the good of society as a whole should supply the forces which act upon and within society with their rational objective. So there must be, I venture to suggest, a measure of "social planning," and in the long run a considerable measure of it—either that or social dissolution, or a social order based on rather obvious force.

As to the difficulties which face the social planner, the peculiarly

[42] A. T. Mason, in 79 *Pennsylvania Law Review,* at p. 693.

[43] Works of *George Saville, First Marquess of Halifax* (Raleigh ed.), 211, quoted by Professor Frankfurter in 45 *Harvard Law Review,* at p. 85.

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American institutions of Judicial Review and Constitutional Limitations do not today assume the obstructive proportions that on first consideration might be expected. This is so for three reasons: first, because Constitutional Law is today more flexible, more free from autonomous concepts, than it has been at any time within forty years; secondly, because the Court itself is more realistically aware than ever before of the essentially legislative character of its task—more aware of its real freedom of choice in the presence of the vast variety of juristic materials which a century and a half of discussion and decision have made available to it; thirdly, because a wider public is also aware of these things, and so not disposed to be unduly impressed by mystifying talk about the nature of the "judicial process."

For all which reasons, once the idea of "social planning" comes to be seriously entertained, the interest of Political Science will, I predict, turn less to questions of governmental power than to questions of governmental function and arrangement. What ought Government try to do? And is our government a well-constructed government to undertake such tasks? And if not, how ought it be amended? The ramshackle character of the national legislative machine, the imbecility of the American party system, the entire lack of assurance of qualified political leadership which these conditions breed—these, to speak only of political factors, are much more serious obstacles to "social planning" than is our system of Constitutional Law.

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THE TEUTONIC ORIGINS OF REPRESENTATIVE GOVERNMENT*

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Representative government, as every student of political science well knows, is now under fire. While it is not necessary to take too seriously the statements made by delirious purveyors of new remedies for old discontents, we cannot fail to take note of the fact that a strong tide of opinion has set in against this famous institution of democracy. On the continent of Europe, dictators either reject it entirely or seek to reduce it to purely advisory functions. In England, rumblings are heard to the effect that the Mother of Parliaments is not well herself; propositions for drastic changes come from members of the House of Commons; and if economic depression and unemployment continue for another ten years it is highly probable that some radical experiments will be made in the direction of concentrating economic powers. The United States is not without its troubles. When in the summer of 1931, with the deepening of the industrial crisis, it was urged that a special session of Congress be called to deal with national distress, President Hoover rather tartly rejected the petition and indicated that our great representative body was more likely to retard than to help "the process of recovery." In taking this position he was strongly supported by the conservative press, and in high quarters the opinion was expressed that it would be a good thing if Congress could be indefinitely adjourned. About the same time, Progressive members of Congress began the serious consideration of ways and means for making its procedure more efficient and for developing a stricter control over the great establishments of the Federal Government.

Although alarmist predictions may be duly discounted, it is certainly fitting and proper that the whole subject of representative government should be subjected anew to searching inquiry in the light of contemporary criticism. Such an inquiry should

* The first of a series of articles, by various writers, dealing with aspects of representative government. The second article, also by Dr. Beard, will appear in the April number.

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cover the origins of representative institutions, their early forms, their development, the conditions favorable to their efficient operation, and the new burdens imposed on them by the technological complexities of the modern world. If this survey is conducted in the spirit of scholarship, informed by scientific research, it should illuminate the issues of practical politics and indicate possible lines of action to be taken in the future.

At the outset of an inquiry into the origins of representative government we encounter the theory that it is the peculiar product of Teutonic political genius, fostered and unfolded by the English-speaking peoples. According to this creed, representative government, unknown to the ancients, came from "the forests of Germany." From the earliest recorded times, we are told, law was made and justice was administered among the Germans by popular assemblies of freemen—tribunals "whose authority flows from the majesty of the people and not from that of the king."[1] Near the close of the nineteenth century, historians could write with final assurance:

> The long and patient labors of German scholars seem now to have established beyond dispute the fundamental historic principle that the entire German family in its earliest known stages of development placed the administration of law, as it placed the political administration, in the hands of popular assemblies composed of the free able-bodied members of the commonwealth. This great principle is perhaps from a political point of view the most important which historical investigation has of late years established. It gives to the history of Germanic and especially English institutions a roundness and philosophic continuity which add greatly to their interest, and even to their practical value. The student of history who attempts to trace through two thousand years of dangers and vicissitudes the slender thread of political and legal thought no longer loses it from sight in the confusion of feudalism or in the wild lawlessness of the Heptarchy, but follows it safely and firmly back until it leads him out on the wide plains of northern Germany, and attaches itself at last to the primitive popular assembly, parliament, law court, and army in one, which embraced every man rich or poor and in theory at least allowed equal rights to all."[2]

When the Teutons, to continue the story, invaded Britain and established themselves upon Roman and Celtic ruins, they carried with them these institutions of popular government and in the course of time developed out of them the system of rep-

[1] G. E. Howard, *An Introduction to the Local Constitutional History of the United States*, 259 (Johns Hopkins University Studies).

[2] H. Adams (and others), *Essays in Anglo-Saxon Law*, 1.

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resentative government. It is not alleged that they established at an early stage a national parliament composed of agents representing communities, for the documents warrant no such startling conclusion—do not even lend color to it. The representative English parliament, as the records plainly indicate, was not founded until the Middle Ages, some seven or eight hundred years after the Anglo-Saxon conquest of Britain. What, then, became of popular government, and how did the idea of representation arise?

Proponents of the Teutonic theory have their answer: in Anglo-Saxon times, local assemblies above the lowest unit, the tun, were representative in character; the shire and hundred courts included the reeve and a certain number of men from each tun or vill. In this way a scheme of representative government was developed in the lower ranges of the political system, and on a foundation of practical experience was laid the parliamentary institutions of the Middle Ages.

For nearly a hundred years this hypothesis was accepted by scholars who wrote on constitutional history and the civilization of mediæval times. It is to be found in the works of Sir Francis Palgrave,[3] Dr. Stubbs,[4] John Richard Green,[5] Hannis Taylor,[6] John Fiske,[7] Prof. George E. Howard,[8] and Prof. George Burton Adams.[9] An examination of the authorities they cite, however, shows that only one of them, namely, Dr. Stubbs, has attempted to give the theory an authentic documentary support.

The evidence upon which Dr. Stubbs bases his statement of the case is then crucial to the issue, and the hypothesis must stand or fall upon his presentation of it. In speaking of the township assembly, he says:

> It arranged the representation of its interests in the courts of the hundred and the shire where the gerefa and the four best men appeared for the township.[10]

[3] *History of the Anglo-Saxons*, xxiii.
[4] *Select Charters*, 358.
[5] *The Making of England*, 188.
[6] *Origin and Growth of the English Constitution*, I, 14.
[7] *American Political Ideas*, 71.
[8] *An Introduction to the Local Constitutional History of the United States*, 259.
[9] *Civilization During the Middle Ages*, 96-97.
[10] *Constitutional History of England* (1897 ed.), I, 97.

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No sources are brought forward in support of this contention. It is reinforced, however, in the discussion of the organization of the hundred moot:

> The court was attended by the lords of lands within the hundred, or their stewards representing them, and by the parish priest, the reeve, and four best men of each township.[11]

Now we come at last within the range of evidence for this great theory which was so long and so generally accepted by English and American historians.[12] Representation of the township in the hundred moot, according to the learned historian, Stubbs, is founded upon *Leges Henrici Primi* (vii, 4, 7; li, 2.), which, by his own confession, give "probable but not authoritative illustrations of the amount of national custom existing in the country in the first half of the twelfth century, but cannot be appealed to with any confidence except where borne out by other testimony."[13]

Be this as it may, let us examine the passages cited. Paragraph 4 (vii) does not refer to the composition of the hundred court at all, and may therefore be set aside at once.[14] Paragraph 2 (li) does shed some light on the composition of the hundred court, but it does not in any way support a representative theory.[15]

The only section which is relevant is vii, paragraph 7; but attached to this is a significant condition which impairs its value as evidence in the case at issue. The circumstances under which the reeve and four men appear are not to be considered as normal.[16] It merely states that if the lord and his steward are com-

[11] *Const. Hist.*, I, 115.

[12] It may be a matter of historical interest to the reader to learn that the pages which follow were written in 1899 and have remained unpublished until the present moment. Since they were originally drafted, the Teutonic theory has been challenged by a number of scholars, notably, Pollard (*Evolution of Parliament*) and Pasquet (*Origin of the House of Commons*); but none of them makes a searching inquiry into the ultimate sources upon which the hypothesis was built.

[13] Stubbs, *Select Charters*, 104.

[14] Debet autem scyresmot et burgemot bis, hundreta vel wapentagia duodecies in anno congregari, et sex diebus antea submoniri, nisi publicum commodum vel regis dominica necessitas terminum praeveniat. *Select Charters*, 105.

[15] Debent autem . . . ad singulos menses, i.e., per annum duodecies, congregari hundreta, comitatus bis, si non sit opus amplius; et omnis homo rectum faciat alteri ad rectum terminum, et omnis causa finem habeat, et submoneatur comitatus vii dies antea. Thorpe, *Ancient Laws and Institutes*, I, 549.

[16] Pollock and Maitland, *History of English Law* (1898), I, 546, 547.

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pelled to be away from the court, the priest, reeve, and four best men are to appear for all who are not especially summoned, and are "to acquit the vill of its suit."[17] A case in itself peculiar —an acknowledged collateral usage—from a document of the twelfth century certainly cannot be made with safety the basis for a statement that the Anglo-Saxon hundred and shire courts were generally representative in character. Dr. Stubbs evidently recognizes the fact that this must be borne out by other testimony, for when he uses the reeve and four best men again he seeks additional evidence:

> The suitors [at the shiremoot] were the same as those of the hundred court: all lords of lands, all public officers, and from every township the reeve and four men. The latter point, left questionable in the laws, is proved by later practice.[18]

Perhaps later practice was the result of later conditions; but this will be taken up more at length. We are interested for the moment in the additional and final evidence for the representative idea. In fact, this is the last word in the case, at least so far as the matter now stands. We are told by Dr. Stubbs to "compare the following passages in Domesday:"

> If the sheriff call them to the shiremoot, vi or vii of the better of them go with him. Whoever is called and does not go pays ii shillings or one ox to the king, and whoever remains away from the hundred court pays just as much.[19] In the city of Hereford whoever has a horse goes three times annually with the sheriff "ad placita et ad hundret."[20] In Derby hundred (inter Ribble et Merse) if anyone remain away from or does not go "ad placitum" where the reeve orders he pays v shillings.[21] At Dover, if they shall have been warned to go to the shiremoot, they go as far as Pinnedennam and no farther.[22] (The participation of ceorls in the shire-

[17] Si quis baronum regis vel aliorum comitatui secundum legem interfuerit, totam terram quam illic in dominio suo habet acquietare poterit. Eodem modo est si dapifer ejus legitime fuerit. Si uterque necessario desit, praepositus et sacerdos et quatuor de melioribus villae assint pro omnibus qui nominatim non erunt ad placitum submoniti. *Select Charters*, 105.

[18] *Const. Hist.*, I, 128.

[19] Si vicecomes evocat eos ad sciremot, meliores ex eis, vi aut vii, vadunt cum eo. Qui vocatus non vadit dat ii solidos aut unum bovem regi, et qui de hundret remanet tantundem persolvit. *Domesday Book*, Archenefield, I, 179.

[20] Qui equum habebat ter in anno pergebat cum vicecomite ad placita et ad hundret. *Ibid.*

[21] Si de hundredo remanebat aut non ibat ad placitum ubi praepositus jubebat, per v solidos emendabat. *Ibid.*, I, 269.

[22] Si fuerint praemoniti ut conveniant ad sciram, ibunt usque ad Pinnedennam, non longius. *Ibid.*, I, 1.

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moot, continues Dr. Stubbs, is mentioned in a charter of Canute, *Cod. Dipl.* iv, 11, and illustrated by the direction of writs to the thegns of the shire twelf-hynde and twy-hynde.)

Here is the ultimate support for the Teutonic hypothesis. Let us examine the clauses one by one, taking them in inverse order—the order of their relative value. The last document mentioned is a writ in which King Canute greets Lyfing archbishop and Godwine bishop and Aelmaer abbot and Aethelwin shireman and Aelric and all his thanes "twelf-hynde and twy-hynde," and makes known to them the fact that the archbishop has been allowed to establish a new liberty for the Christchurch.[23] The fact that Canute greeted some men with "wers" of 200 shillings is certainly no evidence that the interests of the tun were represented by the reeve and four men in the shire and hundred courts.

The second document to be considered is the charter of Canute (*Cod. Dipl.*, iv, 11). Now as a matter of fact this charter does not record the participation of ceorls in a shiremoot. The meeting mentioned in the charter may have been a shiremoot, but it is not so stated. The document announces a compact made between Godwine and Byrhtric before certain persons. At the close of the charter it is stated that every respectable man in Kent and Sussex, "of thanes and ceorls," knows about the transactions.[24] This piece of evidence may be discarded because it does not bear upon the subject in hand.

We have now to examine the Domesday evidence. The customs of Kent are made to contribute support to the four-men theory. What do the sources really say? These particular customs have an historical setting which must be understood. There were certain "forisfactura" which the king had with respect to all lords of free manors and their men in Kent. If one of them died, the king had a relief from his land. However, the lands of three churches and eight men had certain exemptions, and these men came under special customs. For instance, the king had "custodiam" of their lands for six days at Canterbury or at Sandwich, and they had from the king food and drink.

[23] *Codex Diplomaticus*, dccxxxi; Thorpe, *Diplomatarium*, p. 308. There is another writ in which the king makes known to "eallum mannum" that he has granted certain freedom. Thorpe, *Diplomatarium*, 307.

[24] *Codex Diplomaticus*, dccxxxii.

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If they did not get it, they went away without being liable "forisfactura." Now these eight men holding under special conditions were the men who, when summoned to the "sciram," were to go only as far as Pinnedennam. If they did not go, for this "forisfactura" and for all others except "Gribrige" the king had 100 shillings. This bit of evidence may clearly be set aside as irrelevant.

Let us now turn our attention to the evidence from the Derby hundred. Whoever remained away from the shiremoot without reasonable excuse paid a fine of 10 shillings. Absence from the hundred moot was worth 5 shillings. It is not within the field of our investigation to discover the complete composition of the moot. We want to know whether the reeve and four best men were there, and this record from Derby certainly does not show that they were always supposed to be present.

In Hereford city, T. R. E., there were dwelling 103 men within and without the walls, and these men had certain customs. Whoever had a horse went three times annually with the sheriff to the "placita et ad hundret ad Vrmeluia." It requires an unthinkable stretch of imagination to discover any relation between these 103 men in Hereford City and the reeve and four men from the townships.

The most important piece of evidence comes from Archenefield, and it is the only one that need receive credit as belonging to the subject to which it has been attached, although critical study of the Domesday Book ought to warn us against taking a custom from one part of England and setting it up as a system for the whole country. If the sheriff calls the men of Archenefield to the shiremoot, six or seven go with him or else pay a fine. We do not see that they are "sent," "chosen," or "elected;" they go when the sheriff calls them. There are some peculiar facts about Archenefield worth noting. This district was not English, but "had been Welsh until conquered by Harold," and was "brought within the limits of the Domesday Survey as an irregular addition to Herefordshire."[25] Strange customs may have arisen out of its position, and the necessity of attaching it to the jurisdiction of the Herefordshire court. It certainly contributes nothing to the support of the theory of the

[25] Seebohm, *Village Community*, 183-186.

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Teutonic origin of representation. The six or seven men went to the shiremoot, and the custom was Welsh not English.[26] This "custom" was not observed at the time of the survey, however.[27] There was one shiremoot in Herefordshire which the six or seven failed to attend; or if they did attend, they were not included in the record that has come down to us.[28]

Another point indirectly connected with the representation theory should be considered. We read that the tun moot "elected its own officers and provided for the representation of its interests in the courts of the hundred and shire;" that the four discreet men were "chosen" in the tun moot, that they were sent from the tun, and that they were "chosen representatives." For support of the elective theory we must come this side of the Norman Conquest as far as 1188, or perhaps 1231; and even here we are not entirely sure of our ground. Assuming that the representative delegation existed before the Conquest, we know nothing about any town election; there are probably no records of any such meetings in existence.[29] "Once and only once does the township appear in Anglo-Saxon dooms."[30] The township meeting may have existed, and do doubt did; but proof of the fact, if any record was ever made, is now wanting.

Such are the evidences upon which the theory relative to the representative system of the Anglo-Saxons rests, and we are certainly warranted in saying that they are so scanty and so late in time as to demand a rejection of the hypothesis. Dr. Stubbs evidently saw the weakness of the doctrine when he said that the representative custom left questionable in the laws is proved by later practice.[31] But whatever this later practice may have been, we must remember that between it and procedure in the Anglo-Saxon local courts runs the "red thread of the Norman Conquest." It is dangerous to carry twelfth- and thir-

[26] *D. B.*, 179: Hae consuetudines erant Walensium, T. R. E.

[27] *D. B.*, 181: In Archenefield the king has 100 men less 4, who with their men have 73 teams and give custom of 41 sextars of honey and 20 shillings instead of the sheep they used to give, and 10 shillings for fumagium; nor do they give geld or other custom except that they march in the king's army if it is so ordered to them. Seebohm, 185. See the customs, T. R. E., D. B. 179.

[28] Thorpe, *Diplomatarium*, 336.

[29] Pollock and Maitland, *History of English Law*, I, 42.

[30] Maitland, *Domesday and Beyond*, 147.

[31] *Const. Hist.*, I, 128.

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teenth-century institutions back across that line when there are no documents to warrant it.

If we turn to the Norman-Angevin sources which contain unquestionable references to the representative delegation of the villagers, we find that it appears under two conditions: one connected with royal inquests and the other with land tenure. The whole question of the contest between Norman and Anglo-Saxon law is now opened and cannot be avoided. When we speak of inquests and land tenure, we strike at once into Norman law and custom, which were in their final analysis Frankish.[32] Whatever may be said pro or con about the persistence of Anglo-Saxon law, it cannot be doubted that the Normans introduced into England many administrative devices. Among these was the Frankish *inquisitio*.[33] And in addition, the "conquest, the forfeiture, the redistribution of the land gave to the idea of dependent and derivative tenure a dominance that it could not obtain elsewhere, and about that idea in its Norman or French shape there clung traditions of the old Frankish world.[34]

Let us now turn for a moment and examine the *inquisitio* in its old home on the Continent. Its history is long and involved, and only meagre outlines can be given here.[35] The *inquisitio* appears in Carolingian times, and marks a departure from older methods of procedure in evidence.[36] Compurgation and oath-helping form a clumsy system for royal purposes, and more direct measures are adopted to ascertain the truth about matters which especially concern the king. The *inquisitio* is royal, not

[32] Pollock and Maitland, I, 66.

[33] *Ibid.*, I, 93. Brunner, *Entstehung der Schwurgerichte*, 396: "Nach der normannischen Eroberung wurde der angelsächsische Rechtsgang nicht sowohl durch die Gesetzgebung als durch die Anwendung des normannischen Amtsrechts allmählich normannisiert. Indem das Königthum die ausgedehnten processualen Machtmittel die ihm das fränkischnormannische Recht in die Hände legte auf dem Boden Englands in durchgreifender Weise zur Geltung brachte wurden des Königs Recht und die Curia Regis der Ausgangspunct für eine vollständige Umgestaltung des Gerichtsverfahrens." Glasson, *La Grande Encyclopédie*, VII, 1053. "Les Normands importerent tout naturellement dans la Grande-Bretagne ces formes [inquisitio] de procedure lorsqu'ils firent la conquête de l'Angleterre sur les Saxons." See also Brunner, *Forschungen zur Geschichte des deutschen und fränzosischen Rechts*, 246.

[34] Pollock and Maitland, I, 94.

[35] See Brunner, *Forschungen*, 88-247.

[36] "In schroffen Gegensatz zum Wesen des altdeutschen Beweissystems stellt sich ein Beweismittel, welches in karolingischer Zeit auftaucht und inquisitio genannt wird." *Ibid.*, 91.

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popular, and all power of inquisition flows from the king.[37]

When the king's officer holds an *inquisitio* he summons a number of men from the community, not to swear to the innocence or guilt of an accused person, or to any set formula, but to answer royal inquiries "de maritima custodia, de pontibus restaurandas, de latronibus, de hominibus qui in banno et in pœnitentia missi sunt, de monetis et falsariis fabris, de fidelitate regi promittanda," etc.[38] All this is done that royal rights may be maintained, law properly administered, social order preserved, and tax assessments correctly made. Local interests may have been "represented" by the witnesses at the inquisition, but it was because they were royal interests as well. We certainly may not assume that the *inquisitio* was the expression of the "genius of a free people." It seems to have been the creation of a strong central administration, and "may have been adopted from the fiscal regulations of the Theodosian Code, thus owning some distant relationship with the Roman jurisprudence."[39]

However this may be, the witnesses at the inquest do not appear in the spirit of "representation" to present their constituents' claims, but to answer to the inquiries made on behalf of the king, without fear or favor.[40] The officer selected for his purposes *veriores melioresque homines*.[41] The number varied.[42]

Such were the general principles of the *inquisitio* which found

[37] Brunner, *Schwurgerichte*, 98. "Im Namen des Königs per bannum dominicum, per bannum regis werden die Umsassen gezwungen zur inquisitio zu erscheinen." *Forschungen*, 191: "So wie alles Inquisitionsrecht geht auch alle Inquisitionsgewalt vom König aus. Der Inquisitionsbeweis wird bei Königsbann, ex regia auctoritate, geführt, und daher inquisitio regalis, imperialis genannt."

[38] *Capitulare Regum Francorum*, Boretius, I, Part 2, 277.

[39] Stubbs, *Const. Hist.*, I, 656; Brunner, *Schwurgerichte*, 87; Pollock and Maitland, I, 141.

[40] Brunner, *Forschungen*, 231.

[41] Brunner, *Schwurgerichte*, 108: "Er dürfte nämlich nur Nachbarn, Umsassen, homines infra patria habitantes, pagenses, circavicini, homines ibi commantes, homines ejusdem territorii, homines illa vicinia, in eo comitatu, in illis vicinioribus locis consistentes zu Geschwornen auswählen. Die inquisitio soll ausgeführt werden adhibitis his quibus inter pagenses fides habebatur, per veraces et idoneos homines et quorum testimonium dignoscetur esse probabile, per bonos et veraces et nobiles homines ibi commantes. . . ."

[42] "Die Inquisitionsmandate sprechen ganz allgemein dass die pagenses, homines circamantes, &c. zu inquirieren seien." *Schwurgerichte*, 111-112.

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its way into the English administrative system after the Norman conquest. In the new home it was applied to fixed geographical organizations, for "England was already mapped out into counties, hundreds or wapentakes, and vills."[43]

Let us now return to what Dr. Stubbs calls "later practice," in which the reeve and villagers appear. After William the Conqueror came to the throne, he decided to exercise his royal right of levying danegeld. A new geld-book was needed. We know how this assessment roll was compiled for at least a part of England: "Here is subscribed the inquisition of lands according as the barons have made inquiry; that is, by the oath of the sheriff of the county, and of all the barons and their Frenchmen, and of the entire hundred, the priest, reeves, and six villeins of each vill."[44] There was certainly nothing "popular" about this local assembly.

Long afterward, the great administrator Henry II determined upon a sweeping reform in criminal law. For the preservation of peace and the maintenance of justice, it was enacted with the consent of the barons that an inquiry should be made through the several hundreds and counties by twelve of the lawworthy men of the hundred and four from each vill, who were put under oath to tell the truth, whether there was in their hundred or vill any man who had been accused or publicly suspected of being a robber or murderer or thief, or a receiver of such. This inquest was held by royal officers, i.e., the justices and sheriffs.[45] We do not know whether this was a permanent measure or merely an instruction for the justices about to set out on an *iter*.[46] The Assize resembles the instructions often given to the Frankish *missi,* and the process is strikingly like the *inquisitio.* At best, it is a royal order, made in the interest of public law and peace. We do not find anything in the document that makes us think of "representation" or "right of representation." It is a royal inquest. When the Assize of Clarendon was re-issued and expanded in the Assize of Northampton, the four villagers

[43] Maitland, *Doomsday Book and Beyond,* 9.

[44] *Inquisitio Eliensis, Domesday,* III, 497.

[45] *Select Charters,* 143. ". . . per singulos comitatibus inquiratur, et per singulos hundredos per xii legaliores homines de hundredo et per iv legaliores homines de qualibet villata."

[46] Pollock and Maitland, I, 137.

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held their places in the royal machinery that was working for law and order.[47]

Our next document touches the "fiscal process" so well known to students of the Frankish *inquisitio*. In the Ordinance of the Saladin Tithe, the king makes an "attempt to bring taxation to bear on personal property." Our villagers appear here again, not to consent to taxation, but to "determine the liability of individuals."[48] Richard I takes five shillings aid from "unaquaque carucata terrae sive hyda totius Angliae." Royal officers are sent out to make the assessment, and the reeve and villagers from each vill appear at the inquest to make the proper appraisal if necessary. If they misrepresent, they are liable to a penalty.[49]

No royal rights had been more "*un*popular" in England than those connected with the forests; yet when the Itinerant Justices of the Forests make their *iter*, the reeve and four men appear among the others to hear the royal orders.[50]

At the Council of St. Albans the reeve and four men from each township on the royal demesne were called, among others, to make an assessment of "the amount due by way of restitution to the plundered bishops." The authority who tells us of this Council does not indicate the participation of the reeve and four men in the other business of the assembly.[51] However, Dr.

[47] *Select Charters*, 151. ". . . per sacramentum quatuor hominum de unaquaque villa hundredi."

[48] *Select Charters*, 160. ". . . Et si aliquis juxta conscientam illorum minus dederit quam debuerit, eligentur de parochia quatuor vel sex viri legitimi, qui jurati dicant quantitatem illam quam ille debuisset dixisse." The verb *eligantur* will be discussed later.

[49] *Select Charters*, 257. Rog. Hoveden, iv, 46. ". . . quinque solidos de auxilio, ad quos colligendos misit idem rex per singulos comitatus Angliae unum clericum et unum militem, qui cum vicecomite comitatus ad quem mittebantur et legalibus militibus ad hoc electis, praestito juramento quod fideliter exsequerentur negotium regis, fecerunt venire coram se senescallos baronum illius comitatus, et de qualibet villa dominum vel baillivum villae et praepositum cum quatuor legalibus hominibus villae, sive liberis sive rusticis; et duos milites legaliores de hundredo. . . . Statutum erat, quod quicunque rusticus convictus fuisset de perjurio daret domino meliorem bovem de caruca sua, et insuper responderet de proprio ad opus domini regis tantum pecuniae quantum fuisset declaratum per suum perjurium fuisse celatum."

[50] *Select Charters*, 258. "Praedictis igitur justiciariis forestarum itinerantibus preaceptum est ex parte regis, ut per singulos comitatus per quos ipsi ituri essent, convenirent coram eis, ad placita forestae, archiepiscopi, . . . et de unaquaque villa praepositus et quatuor homines ad audienda praecepta regis." Rog. Hoveden, iv, 63.

[51] *Select Charters*, 276. They are summoned "ut per illos et alios . . . de damnis singulorum episcoporum et ablatis certitudinem inquireret."

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Stubbs considers their attendance of great political significance:

> The reeve and four men were probably called upon merely to give evidence as to the value of the royal lands; but the fact that so much besides was discussed at the time, and that some important measures touching the people at large flowed directly from the action of the council, gives to their appearance there a great significance.[52]

The writ for the collection of the fortieth in 1232 presents considerable interest. The reeve and four men from each township make the assessment on oath, in the presence of the royal officers.[53] According to the writ, the four men are to be chosen (*eligantur*) along with the reeve. This Dr. Stubbs regards as an "election" and as "an important indication of the usual process in such selections." This was not, however, the first use of this word, for under the ordinance for the Saladin tithe, many years earlier, four or six villagers were to be chosen to make an appraisement in case of a dispute, "eligantur de parochia quatuor vel sex viri legitimi." While Dr. Stubbs regards such an operation as an election, his conclusion hangs on the interpretation of the verb *eligere,* which in classical and mediæval Latin did not necessarily mean "to elect" in our sense of the term.[54] Though the verb is passive, *eligantur, eligi facient,* we cannot be sure that the reeve and four men were actually chosen by the people of the vill. The witnesses at the Frankish *inquisitio* were sometimes elected, *eligantur,*[55] but by whom we do not know. There is one instance of selection at the behest of the knights assigned to receive the assessment.[56]

Nevertheless, selection by the villagers themselves was not incompatible with thirteenth-century usages, for we have some indisputable examples of what may be termed "popular elec-

[52] *Const. Hist.,* I, 566.

[53] *Select Charters,* 360. ". . . quod videlicet de qualibet villa integra eligantur quatuor de melioribus et legalioribus hominibus una cum praepositis singularum villarum per quorum sacramentum quadragesima pars . . . taxetur et assideatur super singulos, in praesentia militum assessorum. . . ."

[54] *Eligere* meant to choose, to select, to commission, to assign. See *Parl. Writs,* I, 390, and Fustel de Coulanges, *Les Transformations de la Royauté pendant l'Époque Carolingienne,* 445-447.

[55] Boretius, II, part i, 15. ". . . Eligantur a missis nostris ad inquisitiones faciendas."

[56] *Select Charters,* 366. The four men originally chosen were not permitted to assess their own property. "Alii quatuor homines de singulis villis ad hoc *electi per milites praedictos* jurabunt de catallis praedictorum priorum quatuor. . . ."

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tion.''[57] Election was probably the best way to secure the *meliores homines* to carry out royal orders. The assessment for the collection of the thirtieth in 1237 was also made by the reeve and four men from each township.[58] When a royal officer was sent out in 1253 with measures for the preservation of the peace, the sheriffs were ordered to summon, among others, the reeve and four men from each vill to hear and carry out the king's orders.[59]

Such were the royal edicts under which we see the ''later practice'' of ''representation by the reeve and four best men.'' The king's peace is to be maintained, his forests preserved, his laws executed, his administration strengthened, his taxes assessed and paid. He needs the reeve and four men from each vill to help carry out the centralizing policy which is being formed by the great administrators.

We may now turn to the other division of our subject, i.e., to the appearance of the reeve and villagers at the regular hundred and county courts, and at once we enter into intricate questions of ''composition'' and land tenure. The principles upon which the county and hundred courts were organized must be understood, and it is fortunate that the way has been made clear by such high authorities as Pollock and Maitland.[60] The earliest details on the matter in hand are found in the *Leges Henrici Primi*. But before we weigh this evidence we must understand the character of the Law Book with which we have to deal. The author of this remarkable treatise is not giving us pure Anglo-Saxon law, but is trying to state the law as it existed in his day (cir. 1118) with the emendations which had been made by William I and Henry I. The author was probably French, and he has inserted in his work bits from Isidore's *Origines, Lex Salica,* and *Lex Ribuaria*.[61] Above all, we must remember that these are not the pure laws of Edward the Confessor. However, they have been made the basis for reconstructing the local Anglo-Saxon courts upon a representative theory. Indeed, many of

[57] *Rot. Hund.*, I, 5. ''Item homines dictae ville consueverunt eligere sibi constabular' communi assensu. . . .''

[58] *Select Charters*, 367. ''Et ipsi quatuor milites et clericus praedictus eligi facient quatuor de legalioribu hominibus de singulis villis. . . .''

[59] *Select Charters*, 374.

[60] *History of English Law*, I, 532-556.

[61] Pollock and Maitland, I, 100.

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our older historians accepted these laws as describing Anglo-Saxon usages.[62]

But high authorities state that the Norman Conquest was a "catastrophe,"[63] that fundamental changes were made in the administrative system,[64] and that the "idea of dependent and derivative tenure" was strengthened.[65] All this we must bear in mind when we dare to carry the *Leges Henrici Primi* across the line into Anglo-Saxon times.

The *Leges Henrici Primi* must be read in the light of what comes afterward as well as what went before. As we have seen above, the paragraph in these laws (vii, 7) which deals with the reeve and four men does not consider their attendance as general. They are to attend when the lord or his steward cannot be present. This usage is made clear in the light thrown upon the hundred and shire courts by the researches of Mr. Maitland.[66]

His conclusions are substantially these: suit at the courts *is not considered as a right but as a burden* upon particular tenements; the tenements may be sold or transferred, but the suit cannot be legally avoided without royal immunity; the parties, however, may privately determine who is to do the suit; and amid the general lack of uniformity the vill often appears as the unit owing suit. We see everywhere in the Hundred Rolls traces of the burden of suit upon holders of certain tenements. This suit must be done, and the reeve and four men often do it for the vill. Sometimes the reeve and four men and the free tenants attend, but everywhere it appears as a *burden* upon tenements.[67]

We do not see any reference in the documents to the "right" of attending the hundred and shire courts.[68] On the contrary,

[62] Hallam, *Middle Ages*, 77. "I quote the latter (L. H. P.) freely as Anglo-Saxon, though posterior to the Conquest; their spirit being perfectly of the former period."

[63] Pollock and Maitland, I, 79.

[64] Brunner, *Schwurgerichte*, 396.

[65] Pollock and Maitland, I, 94.

[66] *English Hist. Rev.*, III, 417. *History of English Law*, I, 532-556.

[67] *Rot. Hund.*, I, 455. "Quodam tenementum quinquies viginto acrarum terrae in Ketleston de quo *debibatur* una secta ad hundred. . . ." *Ibid.*, I, 6. "Dicunt quod dominus Rex Johannes contulit illud manerium Willelmo de Bokland in libertate, nullum penitus servicium domino Regi faciendum nisi tantum que dominus veniat coram justiciariis iterantibus in primo eorum adventu at quatuor homines cum praeposito."

[68] Pollock and Maitland, I, 537.

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it seems to be a burden of which men are anxious to be rid. The Petition of the Barons contains a complaint against the new suits which had of late been enforced in the kingdom,[69] and the Hundred Rolls give many accounts of suits being withdrawn and allowed to lapse.[70] The idea of burden is not new, for even in pre-Domesday times we read that men are forced to do their suit at the local courts under the penalty of being fined, and William the Conqueror provided penalties for the delinquents.[71] Streams of money flow into the royal treasury from these courts. The king's peace must be preserved, and he must have his fines when it is broken. If the lord or his steward does not appear at the court to do the suit, the reeve and four men may be sent. *Whoever does it feels it a burden and not a right.*

In addition to the regular hundred courts, the sheriff's tourn is made through the hundreds twice a year. This is a royal institution. It has for its object "Quod pax nostra teneatur et quod tethinga integra sit."[72] The reeve and four men and the free tenants attend this court.[73] The sheriff inquires into infractions of the king's peace, and many other petty offenses, and fines to fill the royal treasury are extracted from individuals and whole vills as well. The attendance of the reeve and four men here is also a burden.

Special county courts were held when the king's itinerant justices appeared. It seems that immunity from the ordinary courts did not free any one from these special assemblies, where the royal officers made thorough inquiry into the state of the realm. The reeve and four men must come to these courts to answer for the vill, and perhaps only to be fined for many failures to carry out the laws of the kingdom.[74] The coroners also made use of the reeve and four men at their inquests.[75]

Such are the documents which tell us of the reeve and four

[69] Section 24. *Select Charters,* 385.
[70] *Rot. Hund.,* I, 180, 154, 155 *et passim.*
[71] *D. B.,* I, 269. *Select Charters,* 84.
[72] Pollock and Maitland, I, 559.
[73] *Ibid.,* I, 559. *Rot. Hund.,* I, 55.
[74] *Select Charters,* 358. The Pipe, Plea, and Hundred Rolls tell us in no uncertain manner why the reeve and four men were needed at these courts. Madox, *Hist. Exchequer,* I, 541-568. The vill as a communitas was growing in importance during this period. See Pollock and Maitland, I, 605. See also *Select Pleas of the Crown,* Introduction.
[75] *Rotuli Litterarum Clausarum,* I, 51. See also Gross, *Introduction to Coroners' Rolls.*

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men. Were they stalwart freemen going to the assemblies to stand for their rights and those of their constituencies? Perhaps not. We are prone to read our ideas into documents. Everywhere they seem to be connected with that wonderful Norman and Plantagenet centralizing administrative system which was building up the law-and-order machinery from the vill through the hundreds and counties to the court of the king.

We do not find the reeve and four men in "the forests of Germany," nor in the Anglo-Saxon local assemblies. They appear in history as "men are drilled and regimented into communities in order that the state may be strong and the land may be at peace."[76] Representative government does not spring spontaneously from the political genius of Teutons in England, from an inherent love of liberty and self-government, from an internal constitution of their minds. We have no evidences of it until we see powerful monarchs taxing, enforcing laws, and collecting fines. It seems to have come from the Roman inquisition, that great device for wringing revenues from unwilling subjects. It is to have a great history, and liberty is to be praised in its name, but its origins are not rooted in "the innate structure of human nature," Roman or Teutonic. It began its career as an instrument of power and convenience in the hands of the state, that is, the monarch and those who shared with him efficient sovereignty.

[76] Pollock and Maitland, I, 688.

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THE MANCHURIAN CRISIS

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The bombardment of Mukden by Japanese forces on September 18, 1931, followed by the occupation of a large part of the three eastern provinces of China, i.e., Manchuria, by the Japanese, followed by the expulsion of the Chinese authorities, has brought to a head the long-standing disagreement between China and Japan in regard to their respective rights and policies in that territory, and has presented the League of Nations, the signatories of the Nine-Power Washington Treaty, and the signatories of the Kellogg Peace Pact with an opportunity to illustrate the meaning of these instruments.

I. THE BACKGROUND

With the underlying legal controversies between China and Japan in respect to Manchuria, it will be impossible to deal in this article beyond stating that it is recognized that Japan fell heir to certain legal rights of Russia in Manchuria as a result of the treaty of Portsmouth between Russia and Japan, and the treaty of Peking between Japan and China in 1905. Beyond this, there is perhaps little that is accepted by all parties interested. For instance, whether the Chinese concession to the Russo-Chinese Bank in 1896 of the right to construct and operate the Chinese Eastern Railway, to acquire land "actually necessary for the construction, operation, and protection of the lines, as also the land in the vicinity of the lines necessary for procuring sand-stone, lime, et cetera," and "to have the absolute and exclusive right of administration of its lands," gave rights only of economic utilization, or, in addition, rights of political administration, jurisdiction, and military police, has been vigorously argued, as has the extent of the lands which might be or have been acquired. It also has been questioned whether the Chinese treaty with Russia in 1898, leasing the Liaotung peninsula to the latter for twenty-five years "for the purpose of insuring that the Russian naval forces shall possess an entirely secure base on the littoral of North China . . . the entire military command of

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the land and naval forces and equally the supreme civil administration to be entirely given over to the Russian authorities," gave Russia the exact position during the life of the lease which she would have had if sovereign *vis-à-vis* all the Powers.

While there is little question but that Japan acquired all of the rights of Russia in the Liaotung peninsula and in the Chinese Eastern Railway concessions south of Chanchung as a result of the treaties of Portsmouth and Peking, the question is open whether she acquired more. Does the "additional agreement" between China and Japan in 1905, providing that "when tranquility shall have been reëstablished in Manchuria and China shall have become herself capable of affording full protection to the lives and property of foreigners, Japan will withdraw her railway guards simultaneously with Russia," give Japan a clear right to maintain railway guards in the South Manchuria railway area today? Does the secret protocol alleged to have been negotiated with the treaty of Peking in 1905 by which China is alleged to have engaged "not to construct . . . any main line in the neighborhood of and parallel to that [South Manchuria] railway, or any branch line which might be prejudicial to the interests of the above mentioned railway," really exist?[1] Was the treaty between China and Japan, ratified in 1915 as a result of negotiations begun by the twenty-one demands of Japan, and providing for extension of the Liaotung lease and the South Manchuria railway concession to ninety-nine years, a valid treaty, and if so, is it subject to revision and termination at the initiative of China? Finally, has Japan by treaty, by informal agreement, by general recognition, by prescription, by territorial propinquity, by an Asia Monroe Doctrine, by a "right to live" doctrine, or by any other possible source of right, a special legal position in Manchuria? And, if so, what are the rights flowing from this special position?[1a]

Complex as are the legal problems between China and Japan in Manchuria, the political problems are even more so. What

[1] Since this sentence was written, the Chinese foreign minister, Wellington Koo, has denied the existence of this agreement. On the other hand, the Japanese Foreign Office published an alleged text on January 14, 1932.

[1a] These legal questions are discussed in three volumes by C. Walter Young on *Japan's Jurisdiction and International Legal Position in Manchuria* (Baltimore, 1931). See also the same author's *The International Relations of Manchuria* (Chicago, 1929).

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policy of railroad construction should be followed to promote the sound economic development of Manchuria, and to protect the existing railway investments of which the Japanese possess nearly half a billion dollars? What policy should be followed to prevent friction between the 250,000 Japanese, the 600,000 Koreans, and the 25,000,000 Chinese in Manchuria, half of them migrants during the last thirty years? Do the Japanese railway guards along the South Manchuria Railway give necessary protection to this property from bandits, or do they stimulate Chinese ill-will, reprisals, and incidents to such an extent as to render the railway less secure than it would be without them? What is the value to Japan of Manchurian raw materials, markets, investments, and immigration opportunities, and to what extent would these values be sacrificed, in view of the open door agreements, if all Japanese military and political claims in Manchuria were abandoned? What compensating gains through avoidance of Chinese boycotts would result from such abandonment? What is the value to China of Manchuria, politically and economically, and to what extent are these values impaired by the Japanese claims and activities? Finally, does Japanese behavior in regard to Manchuria manifest, as some Chinese believe, a policy of eventual annexation, and does Chinese behavior in regard to Manchuria manifest, as some Japanese believe, a policy of confiscating Japanese vested economic interests therein?[2]

These controversial legal, economic, political, and psychological questions are the heart of the Manchurian problem between China and Japan. They are not rendered easier of solution through the existence of similar questions concerning Russian interests in the area. The recurrence of insurrection in China and the incompleteness of the authority of the Nanking government add to the difficulties, as does the division of authority in the Japanese constitution by which the military arm is imperfectly controlled by the civil government responsible for the conduct of the foreign relations of Japan. The rising tide of Chinese

[2] Information on these economic and political problems may be found in the publications of the Institute of Pacific Relations, particularly J. B. Condliffe (ed.), *Problems of the Pacific, 1929* (Chicago, 1930). See also C. Walter Young, "Economic Factors in Manchurian Diplomacy," *Annals of the American Academy of Political and Social Science,* November, 1930, pp. 293 ff.

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nationalism and the steadily increasing economic pressure in Japan due to population growth are further aggravating factors. Finally, the serious incidents of the summer of 1931, the assassination of the Japanese general, Nakamura, on the historic date June 28, the Wan Paoshan incident concerning Koreans on July 2, and the bombardment of Mukden on September 18, as well as other recent incidents, with facts undetermined and interpretations often exaggerated, set the match to the tinder.

Although it is necessary to have these background problems in mind for any consideration of the international procedure initiated by the Chinese appeal to the League of Nations on September 19, 1931, it is with the latter that the states of the world other than China and Japan are mainly concerned. This interest is not merely humanitarian, but a legal interest resulting from the ratification by almost every state of some treaty which may be called into operation by the Manchurian incidents. The League of Nations Covenant, to which fifty-five states, including China and Japan, are parties, is clearly involved. Under Article 11, which has been invoked by China, "any war or threat of war, whether immediately affecting any of the members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations." It has been suggested during the discussion that occasion may arise for invocation of Article 10 of the Covenant, by which the members of the League undertake "to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League," and Article 12, by which "the members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement, or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report by the Council."

It has also been suggested that the Kellogg Peace Pact and the Nine-Power Washington Treaty relating to China may be involved. By the Kellogg Pact, which has now been ratified by fifty-nine states, including China, Japan, Soviet Russia, and the

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United States, the parties "solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another." They also agree "that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be solved except by pacific means." By the Nine-Power Washington Treaty, to which China, Japan, the United States, the British Empire, France, Italy, Belgium, the Netherlands, and Portugal are parties, "the contracting powers other than China, agree: (1) to respect the sovereignty, the independence, and the territorial and administrative integrity of China; (2) to provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government;" and "that whenever a situation arises which in the opinion of any one of them involves the application of the stipulations of the present treaty, and renders desirable discussion of such application, there shall be full and frank communication between the contracting powers concerned."

II. THE RESOLUTIONS OF THE COUNCIL

The consideration of the Manchurian problem under these treaties has taken place in the Council of the League of Nations, and at the present writing (December 10, 1931) the third phase of the Council's discussion has just been completed.

The first phase, from September 19 to 30, resulted in two unanimous resolutions, one on September 22, and the other on September 30. By the first, the Council authorized the president "(1) To address an urgent appeal to the governments of China and Japan to abstain from any acts which might aggravate the situation or prejudice the peaceful settlement of the problem; (2) to seek, in consultation with the representatives of China and Japan, adequate means whereby the two countries may proceed immediately to the withdrawal of their respective troops, without compromising the security of life of their nationals or the protection of the property belonging to them." The Council also "decided to forward, for information, the minutes of all the meetings of the Council, together with the documents relating to

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this question, to the government of the United States of America.'"[3]

The second resolution was approved on September 30 in the following form:

The Council 1. Notes the replies of the Chinese and Japanese governments to the urgent appeal addressed to them by its president and the steps that have already been taken in response to that appeal; 2. Recognizes the importance of the Japanese government's statement that it has no territorial designs in Manchuria; 3. Notes the Japanese representative's statement that his government will continue as rapidly as possible the withdrawal of its troops, which has already been begun, into the railway zone in proportion as the safety of the lives and property of Japanese nationals is effectively assured and that it hopes to carry out this intention in full as speedily as may be; 4. Notes the Chinese representative's statement that his government will assume responsibility for the safety of the lives and property of Japanese nationals outside that zone as the withdrawal of the Japanese troops continues and the Chinese local authorities and police forces are reëstablished; 5. Being convinced that both governments are anxious to avoid taking any action which might disturb the peace and good understanding between the two nations, notes that the Chinese and Japanese representatives have given assurances that their respective governments will take all necessary steps to prevent any extension of the scope of the incident or any aggravation of the situation; 6. Requests both parties to do all in their power to hasten the restoration of normal relations between them and for that purpose to continue and speedily complete the execution of the above mentioned undertakings; 7. Requests both parties to furnish the Council at frequent intervals with full information as to the development of the situation; 8. Decides, in the absence of any unforeseen occurrence which might render an immediate meeting essential, to meet again at Geneva on Wednesday, October 14, 1931, to consider the situation as it then stands; 9. Authorizes its president to cancel the meeting of the Council fixed for October 14 should he decide after consulting his colleagues, and more particularly the representatives of the two parties, that in view of such information as he may have received from the parties or from other members of the Council as to the development of the situation, the meeting is no longer necessary.[4]

The second phase of the discussion, from October 14 to 24, resulted in a resolution unanimous, with the exception of Japan, on the latter date and in the following words:

The Council, in pursuance of the resolution passed on September 30; Noting that in addition to the invocation by the government of China of Article 11 of the Covenant, Article 2 of the Pact of Paris has also been invoked by a number of governments; (1) Recalls the undertakings given to the Council by the governments of China and Japan in

[3] 65th Session of the Council, par. 2913. [4] *Ibid.*, par. 2945.

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that resolution, and in particular the statement of the Japanese representative that the Japanese government would continue as rapidly as possible the withdrawal of its troops into the railway zone in proportion as the safety of the lives and property of Japanese nationals is effectively assured, and the statement of the Chinese representative that his government will assume the responsibility for the safety of the lives and property of Japanese nationals outside that zone—a pledge which implies the effective protection of Japanese subjects residing in Manchuria; (2) Recalls further that both governments have given the assurance that they would refrain from any measures which might aggravate the existing situation, and are therefore bound not to resort to any aggressive policy or action and to take measures to suppress hostile agitation; (3) Recalls the Japanese statement that Japan has no territorial designs in Manchuria, and notes that this statement is in accordance with the terms of the Covenant of the League of Nations, and of the Nine-Power Treaty, the signatories of which are pledged "to respect the sovereignty, the independence, and the territorial and administrative integrity of China;" (4) Being convinced that the fulfillment of these assurances and undertakings is essential for the restoration of normal relations between the two parties, (a) Calls upon the Japanese government to begin immediately and to proceed progressively with the withdrawal of its troops into the railway zone, so that the total withdrawal may be effected before the date fixed for the next meeting of the Council; (b) Calls upon the Chinese government, in execution of its general pledge to assume the responsibility for the safety of the lives and property of all Japanese subjects resident in Manchuria, to make such arrangements for taking over the territory thus evacuated as will ensure the safety of the lives and property of Japanese subjects there, and requests the Chinese government to associate with the Chinese authorities designated for the above purpose representatives of other Powers in order that such representatives may follow the execution of the arrangements; (5) Recommends that the Chinese and Japanese governments should immediately appoint representatives to arrange the details of the execution of all points relating to the evacuation and the taking over of the evacuated territory so that they may proceed smoothly and without delay; (6) Recommends the Chinese and Japanese governments, as soon as the evacuation is completed, to begin direct negotiations on questions outstanding between them, and in particular those arising out of recent incidents as well as those relating to existing difficulties due to the railway situation in Manchuria. For this purpose, the Council suggests that the two parties should set up a conciliation committee, or some such permanent machinery; (7) Decides to adjourn till November 16, at which date it will again examine the situation, but authorizes its president to convoke a meeting at any earlier date should it in his opinion be desirable.[5]

The third phase of the discussion, from November 16 to December 10, resulted in the passage by unanimous vote of the following resolution on the latter date:

[5] *Ibid.*, par. 2952.

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The Council, (1) Reaffirms the resolution passed unanimously by it on September 30th, 1931, by which the two parties declare that they are solemnly bound; it therefore calls upon the Chinese and Japanese governments to take all steps necessary to assure its execution, so that the withdrawal of the Japanese troops within the railway zone may be effected as speedily as possible under the conditions set forth in the said resolution; (2) Considering that events have assumed an even more serious aspect since the Council meeting of October 24, notes that the two parties undertake to adopt all measures necessary to avoid any further aggravation of the situation and to refrain from any initiative which may lead to further fighting and loss of life; (3) Invites the two parties to continue to keep the Council informed as to the development of the situation; (4) Invites the other members of the Council to furnish the Council with any information received from their representatives on the spot; (5) Without prejudice to the carrying out of the above mentioned measures, desiring, in view of the special circumstances of the case, to contribute towards a final and fundamental solution by the two governments of the questions at issue between them: decides to appoint a commission of five members to study on the spot and to report to the Council on any circumstances which, affecting international relations, threaten to disturb peace between China and Japan, or the good understanding between them, upon which peace depends. The governments of China and of Japan will each have the right to nominate one assessor to assist the commission. The two governments will afford the commission all facilities to obtain on the spot whatever information it may require. It is understood that should the two parties initiate any negotiations, these would not fall within the scope of the terms of reference of the commission, nor would it be within the competence of the commission to interfere with the military arrangements of either party. The appointment and deliberations of the commission shall not prejudice in any way the undertaking given by the Japanese government in the resolution of September 30th as regards the withdrawal of the Japanese troops within the railway zone. (6) Between now and its next ordinary session, which will be held on January 25th, 1932, the Council, which remains seised of the matter, invites its president to follow the question and to summon it afresh if necessary.[6]

III. PROCEDURE OF THE LEAGUE

The League of Nations Covenant provides for three quite distinct types of procedure in case of hostilities between two participating states: (1) that for stopping hostilities, (2) that for settling the dispute, (3) that for applying sanctions. The precedents have well established that the procedure for stopping hostilities should precede and, so far as possible, be isolated from the procedure for settling the dispute. This distinction is important because the determination of facts and responsibilities

[6] *Ibid.*, par. 2964.

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necessary for settling the dispute is by its nature a long process, while effective action to stop hostilities must necessarily be taken with the greatest possible expedition. Every day that warfare is allowed to continue increases the difficulty of stopping it. This separation has the added advantage that in recommending the cessation of hostilities the Council can treat both parties on a precise equality. No problem of defining the aggressor arises. Prior to the investigation of the merits, it would clearly be improper to impute illegal conduct to either. At the same time, resolutions suggesting a cessation of hostilities are more likely to be effective if they avoid any such implication.

The League Council has become equally insistent upon separating the problem of stopping hostilities from the problem of applying sanctions. Under the Covenant, sanctions are applicable only when territorial integrity or political independence have been violated (Art. 10), or when war has begun contrary to Articles 12, 13, and 15 (Art. 16)—both very difficult matters to determine. Usually war in the legal sense would not exist, and the question of justifiable defense measures short of war would involve an examination of the facts in regard to incidents and the merits of the controversy for which data would generally not be available. On the other hand, the conservatory measures and mediatorial functions of the Council contemplated by Article 11 are authorized not only on the outbreak of war, but upon every "threat of war," or even upon the development of "any circumstances whatever affecting international relations which threaten to disturb international peace or the good understanding between nations upon which peace depends." Thus the Council's competence under this article could hardly be questioned. It is recognized that the most important data for determining the liability of a state to sanctions would be its own attitude and actions *after* the League has been seised of the matter. In other words, the very determination of aggression depends upon a somewhat protracted discussion before the Council while that body is acting without any presumption that either party is guilty of illegal conduct and with the sole objective of stopping hostilities.

These distinctions were emphasized in the report of the Committee of the Council on Article 11, approved by the Council and

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the Eighth Assembly in 1927. This report was divided into two sections, one of which dealt in detail with the procedure for settling disputes "where there is no threat of war or it is not acute," and the other dealing with the stopping of hostilities "where there is an imminent threat of war." The latter, in turn, was divided into seven paragraphs, only the last two of which dealt with sanctions which might arise "should any of the parties to the dispute disregard the advice or recommendations of the Council."[7]

The importance of these distinctions is further emphasized by the existence of the Kellogg Pact, which forbids hostilities in the settlement of disputes, but specifies neither a procedure for settlement nor sanctions. Thus, if action is to be kept within the terms of the Pact, it must be confined to the prevention or stopping of hostilities. In fact, it seems probable that members of the League which have ratified the Pact are obligated, even when acting through League of Nations organs, to refrain from any consideration of the merits of disputes, except in the course of arbitral or judicial proceedings, until hostilities have been stopped. Participation by such states in discussion of the merits with a view to settlement by political agreement in the Council, or support by them of bilateral negotiations between the parties, while one of the parties is invading or occupying the territory of the other, or otherwise bringing military pressure upon it, would appear to abet such party in seeking the settlement of its dispute by other than pacific means, contrary to Article 2 of the Pact.

These distinctions in League procedure have been well illustrated by the Council's consideration of the Manchurian dispute. The Council has devoted its attention up to the time of writing solely to the problem of stopping hostilities and restoring the *status quo ante*. Its care in this regard can be seen by studying its treatment of all suggestions arising in discussions looking toward consideration of the merits of the dispute between China and Japan.

IV. THE FIRST PHASE

In its original formal appeal on September 21, 1931, China "requested that in pursuance of authority given to it by Article

[7] This resolution and the League precedents on the subject are analyzed in T. P. Conwell-Evans, *The League Council in Action* (Oxford, 1929). See especially pp. 37, 51, 115 ff., 253 ff.

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11 of the Covenant, the Council take immediate steps to prevent the further development of a situation endangering the peace of nations; to reëstablish the *status quo ante*; and to determine the amount and character of such reparations as may be found due to the Republic of China." In presenting this appeal, the Chinese representative, Mr. Alfred Sze, added that "it is of course with reference to the first and second steps that immediate action is imperatively required." The Japanese representative, Mr. Yoshizawa, replied by suggesting that the Japanese military movements were necessitated as a defensive measure, and asserting that he had been informed that "a proposal has been made from the Chinese side that the solution should be sought by direct negotiations between the two governments," and that "the Japanese government had welcomed this proposal." The Chinese representative at once declared that "the *status quo ante* must be restored before negotiations are possible." The British representative, Viscount Cecil, endorsed this position by pointing out that "no question has yet arisen of any settlement of the merits of the dispute between the two parties," and that "the settled procedure" of the League in cases of this kind required, first, that "the Council through its president issue an earnest appeal to both sides not to do anything to aggravate the position and to avoid further fighting of all kinds," and second, "where it has been established that the troops of either party have entered the territory of the other, it has been customary for the president to issue an earnest appeal to the troops of both sides to withdraw from the territory of the other party and to avoid anything which might lead to a clash." He recognized that certain "precautions" might sometimes be necessary, but quoted as the *locus classicus* of League policy and procedure in cases of this kind a statement by M. Briand in connection with the Greco-Bulgarian dispute of 1925, agreed to at the time by the representatives of Great Britain, Italy, Japan, and other members of the Council, that

> It was essential that such ideas [that hostilities were justified by defensive necessities] should not take root in the minds of nations which were members of the League and become a kind of jurisprudence, for it would be extremely dangerous. Under the pretext of legitimate defense, disputes might arise which, though limited in extent, were extremely unfortunate owing to the damage they entailed. These disputes, once they had broken out, might assume such proportions that the gov-

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ernment which started them, under a feeling of legitimate defense, would be not longer able to control them. . . . The League of Nations through its Council and through all the methods of conciliation which were at its disposal offered the nations a means of avoiding such deplorable events. The nations had only to appeal to the Council.[8]

On the following day, Lord Cecil's suggestion was approved by unanimous vote in the first resolution already referred to.[9]

On September 25, the Japanese representative informed the Council that his government, in replying to the president's telegram, was "profoundly desirous of ensuring the peaceful settlement of this problem as rapidly as possible by negotiations between the two countries and has the firm intention not to depart from this line of conduct." Furthermore, that "the Japanese forces are being withdrawn to the fullest extent which is at present allowed by the maintenance of the safety of Japanese nationals and the protection of the railway," and "intended to withdraw its troops to the railway zone in proportion as the situation improves." He added that, in his opinion, with respect to the method to be selected for settling the dispute, "it is necessary to respect the wishes of the parties. If the latter or one of them clearly expresses their views as to the choice of procedure, it seems to me it is the duty of the Council—which is moreover confirmed by practice—to respect these desires and to allow the parties in conflict the time necessary to achieve the proposed object, which is the settlement of the problem." The Council, therefore, "would do well not to intervene prematurely, as by so doing it might run the risk of adversely affecting the situation, which actually shows signs of improvement."

The Chinese reply to the telegram sent by the president of the Council drew attention to orders sent by the Chinese government to its army "to avoid all possibility of clash with the invader" and willingness to "assume full responsibility for the protection of life and property as soon as it regained control of the areas evacuated by the Japanese troops." The Chinese representative suggested that a "commission of neutral members should be appointed by the Council and empowered to observe the modes in which, and the time at which, the troops are withdrawn and report thereon to the Council." He reiterated the Chinese government's refusal to negotiate bilaterally while its territory was

[8] 65th Session of the Council, par. 2912. [9] *Ibid.*, par. 2913

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occupied, and informed the Council that the initial approval by the Chinese finance minister, T. V. Soong, of the suggestion by the Japanese minister Shigemitsu for such negotiations had been withdrawn upon discovering that Chinese territory was actually invaded. Mr. Sze also suggested that unless Japan withdrew her troops immediately

> Japan will place herself in opposition to the categorical obligations assumed by her under the first paragraph of Article 15 of the Covenant, to submit to the Council disputes which are likely to lead to a rupture and which are not submitted to arbitration or judicial settlement, and it need hardly be observed that, if Article 15 is brought into operation, the procedure to be taken by the parties to the dispute and by the Council or the Assembly, if the question is referred to them, is no longer a matter of discretion, but is stated definitely and with particularity.

This statement clearly had reference to consideration both of the merits of the dispute and of sanctions.

Lord Cecil, however, immediately professed inability to understand this reference to Article 15, "which could be invoked, as the Chinese representative was aware, by the procedure indicated therein, but which had not been invoked in the present case." The duty of the Council under Article 11 was "not to settle the dispute or pass judgment on the action of the parties, or indeed to do anything but safeguard the peace of nations. It was only when peace had been safeguarded, for that was primarily the duty of the Council, that any question as to the settlement of the actual dispute could arise." He agreed with Japan that the question of the dispute could only be a matter for the parties at this stage; the Council, however, "to preserve the peace of nations" would desire—and the Japanese government too, he hoped—that those troops should be withdrawn as rapidly as possible.[10]

On September 28, the Japanese representative reiterated that complete withdrawal was impossible until security to Japanese lives and property was assured, and the Chinese representative, referring to his earlier proposal of a neutral commission to examine this question on the spot, said that to be conciliatory "he proposed that the Council should help the parties to reach an agreement as to arrangements on the spot, which would make it possible to fix an early date for the completion of the withdrawal

[10] *Ibid.*, par. 2918.

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of troops and render it unnecessary for the Council to send a commission of enquiry from Geneva." He, however, thought that the Council should appoint neutral observers in the Far East to meet with representatives of the parties. Lord Cecil supported this proposal on the supposition that it concerned only negotiations on the question of evacuation and similar questions. When it appeared that the Chinese and Japanese representatives were contemplating a negotiation of wider scope, which, however, the Chinese would accept only if under League auspices and the Japanese only if entirely bilateral, Lord Cecil thought "the Council would be unable to carry the matter further at the present stage."[11]

At its meeting on September 30, the Council unanimously adopted the resolution already quoted, which the president of the Council (who at this time was Señor Lerroux, Spanish minister of foreign affairs) explained was in pursuance of the duty of the Council under Article 11 "to take such action as may be deemed wise and effectual to safeguard the peace of nations." He added that the Council, "in viewing the actual situation before it in the light of this injunction, has singled out one object as being of immediate and paramount importance—namely, the withdrawal of troops to the railway zone. Nevertheless, it could not but admit that, in the special circumstances, a certain time had to be allowed for the withdrawal, particularly in order to ensure the safety of life and property."[12]

V. THE SECOND PHASE

The situation in Manchuria actually became worse, and, upon Chinese request, the Council reassembled on October 13, a day earlier than the time set. The Chinese representative, citing statements of Señor Lerroux, the president of the Council, of Lord Cecil, and of M. Briand, insisted that the restoration of the *status quo ante* "is the first and preliminary step which it is imperative should be taken at once, and it is one which does not involve questions of fact existing prior to September 18, nor should it be confused with the later distinct steps which will need to be taken in order that satisfactory relations between

[11] *Ibid.*, par. 2927.
[12] *Ibid.*, par. 2945.

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China and Japan may be fully reëstablished and maintained.'"[13] After a brief adjournment, the Japanese representative made a long statement emphasizing the danger to Japanese lives and property in Manchuria, the rise of anti-Japanese agitation in China through meetings attended in some instances by Chinese officials, and to the history of Chinese violations of Japanese rights in Manchuria:

> In the face of the situation created by the systematically vexatious manner in which the Chinese authorities deal with our essential rights and interests, the command of the Japanese troops considered it indispensable after the incident of September 18 to take legitimate defensive action with a view to averting at any cost the imminent danger which threatened the very existence of the Japanese in Manchuria. It is from this point of view that the operations undertaken by our troops over a relatively wide radius should be considered.

He thought too great importance should not be attributed to theoretical arguments and possibilities. "Vital realities of the international situation" must be the basis of action, which meant that the Council should "look first of all for means of calming the minds of the public and creating a moral disarmament between the two nations." "The public of my country," he said, "excited beyond measure by the proceedings of the Chinese authorities, cannot be calmed until it is convinced that the perpetual menace to our rights and opportunities in Manchuria has ceased." Therefore,

> If the Chinese government were to make serious efforts to check the anti-Japanese agitation and to arrive in common accord with us at a preliminary basis for the reëstablishment of normal relations between the two countries, it would do much (I am convinced) to promote the relaxation and pacification which is so eminently desirable, thus removing the most serious obstacle to the withdrawal of our troops. The withdrawal of our troops is not conditional on the realization of such an understanding. It is, I repeat, conditional on the security and protection of our nationals.

The Chinese representative, referring to the allusions to anti-Japanese agitation in China, "knew of no accepted principle of international law whereby a government, however strong, powerful, or autocratic, can compel its people to buy from persons whom they do not like," and in regard to the proposed bilateral negotiation, declared that "China will never agree to such a course so long as Japanese troops are illegally upon her soil and

[13] *Ibid.*, par. 2947.

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while satisfactory arrangements have not been made for compensating China for the wrongs done to her since September 18."

> Indeed [he added] Japan herself first rejected direct negotiations. After the occurrences of September 18, she did not limit her action to meeting the precise local condition (whatever that was) by localized action, and dealing with the immediate need for defense (if there was such a need). Without waiting for direct negotiations, she sent large numbers of troops into China, established military occupation in important places over a wide area of China, and carried on military operations which resulted in the loss of many Chinese lives and the destruction of much Chinese property. Thus Japan herself abandoned any possible resort to direct negotiations and made it necessary for China to appeal to the League to prevent further acts of violence and to help her to obtain relief and reparations for the injuries already committed. Surely it is not now right or reasonable for Japan to claim that the adjustment of the whole controversy should be effected through direct negotiations.

The Japanese representative then said, while "it is essential to reach agreement on certain principal points as a basis for negotiation," his government's intention was that these negotiations "shall not include details relating to the settlement of the conditions resulting from the incident of September 18, but shall only deal with the bases of negotiation, with a view to reach an agreement with China on the matter of evacuation, and so on. Without such preliminary negotiation, it is impossible for us to withdraw our troops into the railway zone in view of past experience in analogous cases." The president of the Council, now the French foreign minister, M. Briand, interpreted this as meaning that "he had not in mind negotiations on the situation as a whole, but simply the possibility of conversations on questions relating directly to the problem of the occupation."[14]

At the meeting of the Council on October 22, after the collaboration of an American observer had begun, the president notified the Council that telegrams had been sent by most of the parties to the Kellogg Pact, recalling to China and Japan their obligations, particularly under Article 2 of that instrument. He then submitted a draft resolution which called for evacuation by Japanese troops before the next Council meeting, set for November 16, for Chinese protection of the lives and property of Japanese subjects in Manchuria, and recommended a Sino-Japanese conference to arrange for the evacuation, and "as soon as

[14] *Ibid.*, par. 2948.

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the evacuation is complete, the beginning of direct negotiations on the questions outstanding between them.''[15]

At the meeting on October 23, a communication from Japan in response to the appeals under the Kellogg Pact was read. In this Japan suggested that ''activities of the anti-Japanese organizations are acquiesced in by the Chinese government as a means to attain the national ends of China. The Japanese government desire to point out that such acquiescence by the Chinese government in the lawless proceedings of their own nationals cannot be regarded as being in harmony with the letter or the spirit of the stipulations contained in Article 2 of the Pact of Paris.'' This effort of Japan to present the Chinese boycott as a more serious means of coercion than the Japanese invasion of Manchuria continued throughout the discussion.

Debate then proceeded upon the proposed resolution, and the Chinese representative expressed his government's willingness to accept it, adding

> Any attempt to make the military invasion of Manchuria the occasion for pressing for the solution of other claims would be contrary to the spirit of the Covenant and a violation of Article 2 of the Pact of Paris. China will not discuss any subject with any power under the pressure of military occupation of her territory, nor, what amounts to the same thing, under the pressure of accomplished facts resulting from the use of force during such occupation. This point is vital and goes to the root of the whole controversy before the Council; it is, indeed, the basic principle on which the Covenant and the Pact of Paris are founded. It is because, in the view of the Chinese government, this point is vital and fundamental that I have stressed it, and it is for the same reason I add that the Chinese government is assured that, in adopting this attitude, it has, as a matter of course, the full and unqualified moral support of every member of the League and signatory of the Pact of Paris.

The Japanese representative then proposed a substitute resolution ''noting the statement by the representative of Japan made on October 13 to the effect that the Japanese government would withdraw those of its troops still remaining in a few localities outside the said zone as the present atmosphere of tension clears and the situation improves, by the achievement of a previous understanding between the Chinese and Japanese governments as regards the fundamental principle governing normal relations—that is to say, affording an assurance for the

[15] *Ibid.*, par. 2952.

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safety of the lives of Japanese nationals and for the protection of their property;" and "recommending the Chinese and Japanese governments to confer together at once with a view to arriving at the understanding mentioned" in the above statement. Although the Japanese representative said there was "no question of an attempt to wrest concessions and privileges from China," Lord Cecil felt that more explanation of these "fundamental principles" was necessary. The Japanese representative said that "the purpose of the fundamental principles is merely to make that security and that protection [mentioned in the resolution of September 30] effective."

The president, M. Briand, then distinguished between negotiations on police, administrative, and military measures relating to withdrawal, on which the parties were in agreement, and negotiations on "questions on which, for a long time past, the two countries have been unable to agree. If, before evacuation, matters which have not been settled for months, and even for years, must be discussed between the two governments, obviously the time limit contemplated by the Council is far too short to enable results to be achieved. On this point there is complete disagreement between the two parties. The Chinese view is that negotiations of this nature must be postponed to a date when military pressure no longer exists. They are rejected as a condition of evacuation." Did the "fundamental principles" mentioned by Japan relate to the first or second category?[16]

At the next meeting, on October 24, the Japanese representative said that they "related only to questions coming within the first category," to which Lord Cecil replied that in that case it would be better to omit so ambiguous a term. The Japanese representative declined, saying, "as regards the fundamental principles, my government holds certain views, but I cannot communicate these views officially to the Council until my government has authorized me to do so." The Spanish representative, now Señor Madariaga, noticed "a danger in allowing anyone to claim the right to remain on the spot when that party has invaded a territory in which it has no right to be, by stating that there is no security, particularly as in certain respects at least the party is partially responsible for the state of insecurity." He

[16] *Ibid.*, par. 2953.

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found himself perplexed by the Japanese proposal, which seemed to be "that evacuation depends on security, security depends on pacification, and pacification depends on the settlement of a number of questions which have nothing to do either with security or with evacuation." He thought, however, that "the rule of the League—which is to separate the nations so as to enable them to discuss peacefully—and the interests of Japan and of China" could both be accommodated by advance agreement to begin negotiations immediately upon evacuation of Chinese territory.

Lord Cecil then referred to reports that "Japanese official circles were very disappointed and resentful as a result of the League's apparent intention to override Japan's insistence on Chinese recognition of treaty commitments as a *sine qua non*." He thought

> There can be no question of the League desiring to override the sacredness of treaties. Of course it is quite possible that there may be a dispute between the parties to treaties as to the validity of a treaty or as to the interpretation of a treaty. Fortunately, any such dispute as that can now be settled authoritatively by an appeal to the Permanent Court of International Justice at The Hague, over which, as it happens, a Japanese national at the moment presides. It is certain that any such question would be discussed with absolute fairness and impartiality at The Hague. The League could, at any moment, obviously express the view that all treaties ought to be carried out; but that is not the question before us. The treaties hold; but to discuss up to what point they bind the contracting parties would seem to me to be definitely reversing the order of things. Evacuation must take place first, discussion of the treaties may follow. It is an important matter, but is not one which would directly affect the safety of the nationals of Japan, and therefore is not one which ought to be discussed before the Japanese troops retire from the territory which they occupy.

The president, M. Briand, referred to the resolution of September 30, agreed to by Japan, in which no mention was made of negotiations upon "fundamental principles" before evacuation. Then, referring to Article 10 of the Covenant and Article 2 of the Kellogg Pact, he said:

> This is a dispute which has been laid before the Council. There can be no question of dealing with it by other than pacific means. Japan, who always so scrupulously honors her obligations, could not dream of adopting any other means. I do not wish to dwell unduly on this point; but public opinion would not readily admit that a military occupation under these circumstances could be regarded as coming under the heading of pacific means. To prolong this situation would be to perpetuate a state of anxiety which has already lasted too long.

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M. Briand admitted "uneasiness" if the Japanese representative intended by his proposal "to begin negotiations concerning the substance of certain delicate problems which have long existed," but this intention had been denied. He hoped, therefore, there would be agreement. The Japanese representative, however, was unmoved, and Señor Madariaga asked for a clarification of the "fundamental principles," calling attention to the preamble of the Covenant prescribing "open, just, and honorable relations between nations." The Council adjourned, to meet in the afternoon, when it voted down the Japanese substitute proposal, 1 to 13, and voted for the president's proposal 13 to 1. The president, M. Briand, declared that "the draft resolution which has been adopted after a long discussion is now on the Council table," and the meeting adjourned until November 16.

VI. THE THIRD PHASE

The Japanese government, holding that this resolution had not achieved the unanimity required under Article 11 of the Covenant, declined to recognize it as a binding obligation, and when the Council reassembled on November 16, far from being withdrawn, the Japanese occupation of Manchuria had been extended. In opening the discussion, M. Briand drew attention to events which had occurred since the closing of the last session, including receipt of a communication from China (October 24) by which she "undertook to settle all disputes with Japan as to treaty interpretation by arbitration or judicial settlement as provided in Article 13 of the Covenant," and receipt of a communication from Japan (October 26) setting forth five "basic principles" relating to "(1) mutual repudiation of aggressive policy and conduct; (2) respect for China's territorial integrity; (3) complete suppression of all organized movements interfering with freedom of trade and stirring up international hatred; (4) effective protection throughout Manchuria of all peaceful pursuits undertaken by Japanese subjects; (5) respect for treaty rights of Japan in Manchuria." He had replied (October 29) that the first four points seemed to be fully covered by the draft resolution of October 24 and, although the Japanese representative in agreeing to the resolution of September 30 had given "no indication whatever . . . that matters such as an agreement on treaty rights of

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Japan in Manchuria were in any way connected with the safety of lives and property of Japanese nationals," yet solution of the fifth point could be sought along the lines suggested in the Chinese note. He had also several times, on the occurrence of incidents in Manchuria, reminded the parties of their obligations under the resolution of September 30.[17]

The Council met formally only four times during this session, but labored continuously in private conversations to arrive at a formula which would gain the consent of both China and Japan. On November 21, the Japanese representative, referring to "the openly declared policy of the Chinese Nationalist party" of "unilateral repudiation of treaties," and to its encouragement of "disregard in practice" of treaty clauses and of "anti-foreign campaigns," which had led in Manchuria "to a long series of vexatious acts, of acts of hostility and provocation, and to cases of denial of justice," until "the Japanese people had been forced to realize that China was seeking in every way to take from the Japanese nation its legally acquired rights and to deprive the Japanese and Koreans residing in Manchuria of the fruits of their hard and patient labor," declared that "Japan's right to live and her very existence are today at stake." He considered that "the essential condition of a fundamental solution of the question is a real knowledge of the situation as a whole, both in Manchuria and in China itself," and accordingly proposed that the League send a commission of inquiry to the spot, which, however, "would not be empowered to intervene in the negotiations which may be initiated between the two parties, or to supervise the movements of the military forces of either."

The Chinese representative insisted that the "military occupation of Chinese territory by Japanese forces in violation of solemn treaties and of the Covenant was the crux of the situation," and that his government could not "bargain for withdrawal." Nevertheless, he was ready to accept "reasonable arrangements involving neutral coöperation under the auspices of the League." Discussion proceeded in regard to the Japanese proposal, although the members of the Council wished to make it clear that the dispatch of a commission with such a wide competence prior to evacuation could be justified only by the "exceptional charac-

[17] 65th Session of the Council, par. 2957.

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ter'' of the situation. Thus Señor Lerroux of Spain said: ''The important point is not the history of the relations between China and Japan, nor the validity of the treaties and protocols in which these relations are defined,'' nor even the ''nature of the dispute,'' but only ''the methods employed to remedy the position and the question whether these methods can be reconciled with the principles'' of the Covenant and the Pact. He even thought the resolution of September 30, ''by making evacuation of Chinese territory by Japanese troops depend upon the security of Japanese nationals and their property,'' had ''reversed the rôle which the desire for security should play'' and would be ''dangerous'' to take as a precedent. In any case, ''safety and protection should be understood in their obvious and direct sense,'' and should not include ''the settlement of certain questions relating to the disputed treaties.''[18]

It was evident during the two weeks of private conversations which ensued—partly consumed by an effort to stop the threatened hostilities about Chinchow—that a conciliatory policy by either government was opposed by increasingly vociferous elements of home public opinion. Nevertheless, under immediate danger of forced resignation, both governments instructed their representatives at Geneva to approve the resolution which had been drafted on December 10. This reiterated the duty, recognized in the resolution which both had accepted on September 30, of Japan to withdraw her troops ''as speedily as possible,'' and of both states ''to adopt measures necessary to avoid any further aggravation of the situation.'' In addition, the resolution provided for dispatch to Manchuria of a commission of five, with an assessor from China and one from Japan. The competence of this commission was stated, in the words of the second sentence of Article 11 of the Covenant, to report to the Council ''on any circumstance which, affecting international relations, threatens to disturb peace between China and Japan or the good understanding between them on which peace depends.'' This suggests a broad survey of ''all matters in dispute'' between the two parties in Manchuria, and such was the interpretation given by M. Briand in presenting the resolution,[19] and by President

[18] *Ibid.*, par. 2960.
[19] *Ibid.*, par. 2964.

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Hoover in his message delivered to Congress on the same day.[20] This seems to depart from the League's previous position that all consideration of the merits must be deferred until military pressure is ended.

It is to be observed, however, that while the commission might report to the Council on all elements of the situation prejudicial to peace and good understanding, any negotiation between the parties was expressly excluded from "the scope of the terms of reference," as was "any interference with the military arrangements of either party." As the utilization of the text from Article 11 of the Covenant indicated, the commission's labors were to be contributory to the peace-preserving functions of the Council under that article, and to avoid any direct consideration of the merits of the controversy or of sanctions. However, the members of the council seemed to feel that it suggested some lapse from principle, and the representatives of Great Britain, France, Spain, Poland, Venezuela, Peru, and Panama emphasized in individual speeches that the situation was exceptional and could not serve as a precedent for the future. M. Briand attributed this special character to "the exceptional nature of the treaty or customary relations existing in normal times between the two countries," and to the fact that the "political status of one of the countries was governed by the international obligations of the nine-power convention . . . . which it was not within our competence to interpret here." He insisted, however, that the resolution "in no way affected the doctrine of the Council of the League of Nations" that:

> Except in the case of an express stipulation in treaties in force, the Covenant of the League of Nations does not authorize a state, however well founded its grievances against another state, to seek redress by methods other than the pacific methods set forth in Article 12 of the Covenant. For members of the League that is a fundamental principle, in the same way as the 'scrupulous respect for all treaty obligations,' on which such stress has rightly been laid in the preamble of the Covenant. These two principles are of equal value. Any infringement of either lays a grave responsibility on members of the League. This responsibility was reaffirmed in the Pact of Paris, whose signatories assumed or renewed the undertaking to resort to pacific means alone for the settlement of international disputes.

Lord Cecil emphasized that, under Article 11, the Council could act only by unanimity, and that its "task was not one of arbitra-

[20] Dept. of State, Press Releases, No. 117, p. 605.

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tion and decision but mediation and persuasion," and must be judged in that light. He added that the work of conciliation could easily be destroyed by either party, but such party "would bear a heavy load of responsibility before the public opinion of the world. . . . In no case nowadays must a nation take the law into its own hands." The representatives of the Latin American states (Venezuela, Peru, Panama) particularly emphasized the compromise character of the resolution due to exceptional circumstances, and insisted that in voting for it they in no way receded from the basic principles of international law expressed in the League Covenant and, in a more limited manner, in the Second Hague Convention of 1907 based on the Drago Doctrine, that military occupations are not justified "to insure the execution of certain treaties" or "to impose direct negotiations on questions that are pending" or "to collect debts," and that the right of a state "to ensure the protection of the lives and property of its nationals must be limited by respect for the sovereignty of the other state; no state being entitled in order to provide such protection to authorize its military forces to penetrate into the territory of the other for the purpose of carrying out police operations." The representative of China observed in reference to the "special character of the question" that "China cannot be expected to admit that the operation of treaties, covenants, and accepted principles of international law stops at the border of Manchuria."[21]

This discussion indicates the importance which the Council attaches to deferring discussion, or even investigation of the merits of a dispute, until military pressure has ended. In this phase, as in the two preceding ones, allusion to possible sanctions was considerably veiled. It is clear, however, that if the application of sanctions should be considered at a later time, the proceedings before the Council since September 19 will furnish important evidence as to the aggressor. Under Article 12 of the Covenant, a state that goes to war without utilizing the pacific machinery suggested by this article is liable to sanctions, particularly to the economic blockade provided in Article 16. In the resolution of 1927, already referred to, other sanctions, such as the withdrawal of diplomatic representatives and display of force, were sug-

[21] 65th Session of the Council, par. 2965.

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gested. The League's proceedings themselves should make it clear which state has declined to utilize the pacific machinery suggested, and which would consequently be liable to sanctions should war eventuate. For this decision, no examination of the events before September 19, 1931, would be necessary. While Article 10, guaranteeing the territorial integrity of all members of the League, and the Nine-Power Washington Conference treaty relating to Chinese territorial integrity, have been mentioned in the discussion, the applicability of neither to the existing situation has been directly asserted. It is far from clear what constitutes a violation of territorial integrity. Does every invasion constitute such a violation, or only the manifestation of intention permanently to annex such territory?

VII. THE COÖPERATION OF THE UNITED STATES

The Kellogg Pact was repeatedly referred to in this discussion, and a definite procedure for integrating the peace efforts of the United States under the Pact with the efforts of the League of Nations was developed. Such coöperation had taken place in connection with the Chaco dispute between Paraguay and Bolivia in 1929. At that time, the Inter-American Conference on Arbitration and Conciliation was sitting in Washington. This conference, of which the United States was a member, undertook to mediate the dispute, and the League of Nations cooperated to the full, utilizing its normal procedure under Article 11. On that occasion, however, the integration of the efforts of the two organizations was effected through states which were members of both. In the present instance, the United States coöperated directly with the League of Nations.

As has been noted, the resolution of September 22 provided that the minutes of all the meetings of the Council and the documents relating to the question should be communicated to the government of the United States. On being notified of this resolution, Secretary Stimson assured the secretary-general of the League of Nations "that the government of the United States is in whole-hearted sympathy with the attitude of the League of Nations as expressed in the Council's resolutions, and will dispatch to Japan and China notes along similar lines." He added that he had "already urged cessation of hostilities and a with-

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drawal from the present situation of danger and will continue earnestly to work for the restoration of peace." Notes to this effect were sent to China and Japan on September 25, and replies were received from both on September 27.[22] On October 9, Secretary Stimson assured the League of full American coöperation in its efforts along the lines begun, and thought it desirable "that the League in no way relax its vigilance and in no way fail to assert all the pressure and authority within its competence toward regulating the action of China and Japan in the premises." The statement is so important as to deserve full quotation:

> I believe that our coöperation in the future handling of this difficult matter should proceed along the course which has been followed ever since the first outbreak of the trouble fortunately found the Assembly and Council of the League of Nations in session. The Council has deliberated long and earnestly on this matter, and the Covenant of the League of Nations provides permanent and already tested machinery for handling such issues as between states members of the League. Both the Chinese and Japanese have presented and argued their cases before the Council, and the world has been informed through published accounts with regard to the proceedings there. The Council has formulated conclusions and outlined a course of action to be followed by the disputants; and as the said disputants have made commitments to the Council, it is most desirable that the League in no way relax its vigilance and in no way fail to assert all the pressure and authority within its competence towards regulating the action of China and Japan in the premises.
>
> On its part the American government, acting independently through its diplomatic representatives, will endeavor to reënforce what the League does and will make clear that it has a keen interest in the matter and is not oblivious to the obligations which the disputants have assumed to their fellow-signatories in the Pact of Paris as well as in the Nine-Power Pact should a time arise when it would seem advisable to bring forward those obligations. By this course we avoid any danger of embarrassing the League in the course to which it is now committed.[23]

At the Council meeting on October 15, M. Briand recalled the exchange of communications with the United States and asked the Council's consent to an invitation to the United States to "send a representative to sit at the Council table so as to be in a position to express an opinion as to how, either in view of the present situation or of its future development, effect can best be given to the provisions of the Pact." The Japanese repre-

[22] Dept. of State, Press Releases, No. 104, p. 238; No. 105, p. 257.
[23] Dept. of State, Press Releases, No. 107, p. 295.

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sentative objected to extending this invitation on the ground (1) that under Article 4, paragraph 5, of the Covenant the only additional members of the Council contemplated were members of the League sitting "during consideration of matters specially affecting the interests of that member of the League;" (2) that non-members of the League could be invited to sit on the Council only under Article 17 of the Covenant in respect to matters in which they had a direct interest in a dispute before the Council; (3) that the interest of the League as a whole in the preservation of peace under Article 11 of the Covenant was not an interest peculiar to any member of the League, much less to a non-member; (4) that if the intention was to invite the United States to send a representative who would sit as an observer under the Kellogg Pact, there was no reason for sending the invitation to the United States alone, as many other states were parties to the Pact; and (5) that in any case the decision to extend the invitation required a unanimous vote, as do all decisions under Article 11 of the Covenant.

This attitude of the Japanese representative precipitated a two days' debate, after which all members of the Council, except Japan, agreed with the president, M. Briand, that there was no question of inviting the United States to sit as a member of the Council under Article 17, that the question of communicating with the United States had already been decided by unanimous vote in the resolution of September 23, and that the invitation to participate in a new form of communication, oral rather than written, was a matter of procedure to be decided under Article 5, paragraph 2, of the Covenant by majority vote of the members of the League represented at the meeting. Several members of the Council recognized that the constitutional question, "Who is entitled to decide whether a question submitted to the Council is a question of procedure or one of substance and how the matter is to be decided," was not prejudiced by their vote to extend the invitation, because there had been a unanimous resolution to communicate in this instance with the United States.[24]

In pursuance of this vote, the invitation was extended, and on October 16, Mr. Prentiss Gilbert, United States consul in Geneva, took his seat in the Council of the League. He expressed his gov-

[24] 65th Session of the Council, pars. 2949, 2950.

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ernment's sympathetic appreciation of the League's efforts, its whole-hearted accord with the League's objectives in this case, and the hope "that the tried machinery of the League may in this case, as on previous occasions, be successful in bringing the dispute to a conclusion satisfactory to both parties." He emphasized that in deliberations on the application of the Covenant he could "take no part," but only in discussions respecting the Pact of Paris which represented "an effective means of marshalling the public opinion of the world behind the use of pacific means only in the solution of controversies between nations."[25] On the next day, Mr. Gilbert expressed appreciation of the Japanese representative's insistence that his attitude in respect to the invitation did not denote any want of friendliness to the United States; but he did not participate further in the reported discussions of the Council until the adjournment on October 24, when he thanked several members for their flattering allusions to his country.

On November 6, Secretary Stimson issued a statement to the effect that "the policy of the government of the United States remains unchanged, namely, by acting independently through the diplomatic channels and reserving complete independence of judgment as to each step, to coöperate with and support the other nations of the world in their objective of peace in Manchuria."[26] On November 11, the Secretary issued a statement that he had asked General Dawes, the ambassador in London, to go to Paris "during the coming meeting of the statesmen who compose the Council of the League of Nations." He added:

> Inasmuch as this meeting will consider the present situation in Manchuria, and questions may arise which will affect the interests or treaty obligations of the United States, I desire to have at hand in Paris a man of General Dawes' standing, particularly as the American ambassador to Paris is at home on leave. It is not anticipated that General Dawes will find it necessary to take part in the meetings of the League Council, but he will be in a position to confer with the representatives of the other nations present in Paris in case such conference should seem desirable.[27]

On November 18, to correct certain erroneous statements which had appeared in the press, the Secretary again stated the policy

[25] *Ibid.*, par. 2951; Dept. of State, Press Releases, No. 107, pp. 296-299.
[26] Dept. of State, Press Releases, No. 110, p. 430.
[27] *Ibid.*, No. 111, p. 452.

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of the United States, in the following terms:

It is not true that this government has changed in any way the attitude on the Manchurian situation which it has held from the first. The American government has not proposed any terms of settlement either to Japan or to China, has not been approached by either government on the subject of terms which it might approve, and has made no commitments, either express or implied, to either of the disputants. This government has consistently urged and is continuing to urge that only peaceful means and not military pressure shall be used in the settlement of the dispute between China and Japan regarding Manchuria. It understands that this is the essence of the position taken by the nations represented on the Council of the League of Nations at Paris. This government earnestly hopes that the negotiations now going on in Paris will find a way which will lead to a settlement of the difficulty in accordance with these principles.[28]

This statement was amplified by another made by Ambassador Dawes on November 20 after his arrival in Paris, in which he indicated full sympathy with the efforts of the League, but insisted that the United States should preserve its full freedom of judgment, and that inasmuch as the United States could not take part in the discussions upon the application of the machinery of the League Covenant, "his presence at the meetings of the Council would not only be inappropriate but might even embarrass the efforts of the Council itself." The entire statement was as follows:

I have been directed to come to Paris for the purpose of discussing with the representatives of the different nations assembled here the crisis which is taking place in Manchuria. As a signatory of the Pact of Paris and of the so-called Nine-Power Treaty, the United States is deeply interested, with its fellow-signatories, in seeing that the lofty purpose of those treaties is fulfilled. It has been the hope of my government that a settlement in accordance with the principles of those treaties would be arrived at through discussion and conciliation during the conferences in Paris, and that the presence here of a representative of the United States would contribute to bring about a solution through this method. The United States is, of course, not a member of the League of Nations, and it therefore cannot take part in the discussions bearing upon the application of the machinery of the League Covenant. Since, in the present crisis, it may be possible that such discussions may arise, it is obvious that my presence at the meetings of the Council would not only be inappropriate but might even embarrass the efforts of the Council itself. But the position thus necessarily assumed by the United States in no way indicates that the United States is not wholly sympathetic with the efforts being made by the League to support the objective of

[28] Dept. of State, Press Releases, No. 112, p. 483.

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peace in Manchuria. The United States must, however, preserve its full freedom of judgment as to its course.[29]

In his message to Congress on December 8, President Hoover, immediately after stating that the United States had continued its policy of withdrawing its marines from Haiti and Nicaragua, asserted that "the difficulties between China and Japan have given us great concern, not alone for the maintenance of the spirit of the Kellogg-Briand Pact, but for the maintenance of the treaties to which we are a party assuring the territorial integrity of China. It is our purpose to assist in finding solutions sustaining the full spirit of those treaties." In his supplementary message of December 10, the course of the efforts to preserve peace in Manchuria was reviewed, and it was stated that "this government has consistently and repeatedly by diplomatic representation indicated its unremitting solicitude that these treaty obligations be respected." At the same time, the wisdom of observing the utmost patience both by the government and by public opinion was emphasized.[30]

The president alluded to the resolution then pending in the Council of the League, and immediately after its passage, texts were released by the Department of State and Secretary Stimson expressed "gratification at its unanimous adoption" and represented it as "a definite step of progress." He said "this government has from the beginning endeavored to coöperate with and support these efforts of the Council by representations through the diplomatic channel to both Japan and China," particularly because it had "direct interest in and obligations under the Kellogg-Briand Pact and the Nine-Power Treaty." He reviewed the course of the League's efforts, and while he believed that the "ultimate solution of the Manchurian problem must be worked out by some process of agreement between China and Japan themselves," he insisted that the "method employed in this settlement shall, in harmony with the obligations of the treaties to which we are parties, be made in a way which shall not endanger the peace of the world, and that the result shall not be the result of military pressure." He thought it a "signal accomplishment that there has been arrayed behind these principles in a harmonious coöperation

[29] Dept. of State, Press Releases, No. 112, p. 459.
[30] *Ibid.*, No. 117, p. 604.

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such a solid alignment of the nations of the world." Finally, he emphasized that the resolution in no way endorsed any action hitherto taken in Manchuria, and that the "American government will continue to follow with solicitous interest all developments in this situation in the light of the obligations involved in the treaties to which this country is a party."[31]

From this it appears that the United States has coöperated in full in League discussions in so far as they concern the preservation of peace, and has in a general way endorsed the measures taken by the League Council. The writer has no evidence, however, that the United States directly approved the resolution of October 24, which called for withdrawal of Japanese troops within a fixed date, and which was not approved by Japan. Nor has the United States been consistent in its policy with respect to the method of coöperating in League discussions. With exception of the period from October 16 to October 24, when an American representative sat as an observer in the Council, this coöperation has been through an American representative near the Council, but not sitting in the Council.

In addition to its coöperation with the Council, the United States has communicated with Japan and China on occasions when impairment of the Kellogg Pact or the Nine-Power Treaty seemed imminent. Thus, on December 22 it sent a note to Japan expressing concern at the military movements in the direction of Chinchow, to which Japan replied on December 27 by a long statement pointing out that Japanese "acts of self-protection resulted, to her considerable embarrassment, in her having to assume the duty of maintaining public order and private right through a wide area," that Japanese forces were menaced by Chinese military preparations about Chinchow, that the bandit situation in Manchuria was getting worse, probably as a result of official Chinese stimulation, and that consequently Japan might have to consider further military movements. Soon after this, Japan occupied not only Chinchow but also Shanhaikwan, at the point where the Great Wall of China meets the sea. With this elimination of the last vestige of Chinese administrative authority in South Manchuria, Secretary Stimson, on January 7, notified Japan and China that "it cannot admit the legality of any situation

[31] Dept. of State, Press Releases, No. 115, p. 547.

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de facto, nor does it intend to recognize any treaty or agreement entered into between those governments, or agents thereof, which may impair the treaty rights of the United States or its citizens in China, including those which relate to the sovereignty, the independence, or the territorial and administrative integrity of the republic of China, or to the international policy relative to China, commonly known as the open door policy; and that it does not intend to recognize any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27, 1928, to which treaty both China and Japan as well as the United States are parties."

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LEGISLATIVE NOTES AND REVIEWS

The Results of Governors' Messages in 1931. The REVIEW has, for several years past, published a summary of the messages delivered by the governors to their legislative bodies convened in regular or special session. But heretofore there has been no attempt to bring to light the extent to which the legislatures have followed or declined to follow the governors' recommendations. Nevertheless, until this is done it is difficult to interpret the messages. Some governors seem to be in earnest and really conduct a campaign in the legislative body to secure favorable action on their proposals. Others use the message as an opportunity to sound out public sentiment. If the reaction is unfavorable, no bill is introduced, or one which has been introduced is quietly killed, with the governor as chief accessory before the fact. The presence or lack of harmony in political views between the governor and legislature, as evidenced by party membership, has an important influence upon the success or failure of executive proposals.

If, as Professor Holcombe suggests, the governor is really the "chief legislator," we should find a high correlation between his recommendations and the session laws. It is the purpose of this brief and fragmentary study to try a verification of this hypothesis. Because of the large number of legislative sessions in 1931, sampling was necessary. The samples selected include Connecticut, Texas, Nebraska, Pennsylvania, Wisconsin, Minnesota, and California.[1] There was no rational basis for the selection of these particular states except the hope that friends could be found in each who would aid in collecting the necessary material. No conclusions should be drawn from the summaries which follow, except that they are the raw material from which generalizations may later be made after this process of analysis has been extended to many other states, and after our technique of observation of this genus of data has been reasonably well perfected.

Connecticut. Governor Wilbur L. Cross, Democrat, made twenty-eight specific recommendations in his message of January 7. The General Assembly, controlled in both houses by a Republican machine which had long been in power, approved eight of these. The bills to carry out the recommendations of the governor were referred to hostile committees, which succeeded in killing most of them. "The failure of the major part of the program was due primarily to two factors. The first is the

[1] The following persons have furnished data or have aided in securing it: Connecticut, Milton Conover and Roy I. Kimmel; Texas, Frank M. Stewart; Nebraska, John P. Senning; Pennsylvania, J. H. Fertig; Wisconsin, Edwin E. Witte; Minnesota, Morris B. Lambie; and California, Samuel C. May and Thomas Dabagh.

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general political situation in Connecticut. . . . The second factor was the control of the legislature by a political machine long accustomed to distributing patronage.''[2] Connecticut is rapidly becoming an urban state, yet its legislature is still controlled by the farmers. It is likely that offices filled by state-wide vote will continue to be filled by urban representatives, while a rotten borough system perpetuates rural control of the legislature.

Measures approved include: (1) increasing the number of judges of the superior court from eighteen to twenty; (2) appropriating $100,000 for thinning state forests, as work for unemployed; (3) appropriating $1,640,000 for new construction at state tuberculosis sanitoria; (4) allocating $3,000,000 a year from state highway funds for the construction of rural roads; (5) proposing a constitutional amendment for an absentee voters' law; and (6) purchase of Rocky Neck Park. Other recommendations approved in compromise form include: (1) proposing a constitutional amendment to legalize the presentation of legislative acts to the governor for signature after the *sine die* adjournment of the Assembly, and giving the governor fifteen days in which to sign a bill after presentation, all bills not signed becoming law; (2) proposing a popular referendum in 1932 on memorializing Congress for the repeal of the Eighteenth Amendment. The governor had asked for such a memorial. Measures defeated include: (1) permitting the governor to nominate judges for the local courts (now monopolized by the Assembly, with gross violations of the merit system); (2) establishment of a district court system; (3) requiring a two-thirds vote of each house to override a veto instead of a simple majority as now; (4) creating a commission to investigate the departments of the state with a view to integration; (5) old age pension law (a commission was appointed to investigate the subject); (6) creating a commission to study the tax system and to propose a plan for a more equitable distribution of the tax burden; (7) giving the public utility commission power to begin proceedings on its own motion; (8) publishing rate schedules on file with the public utilities commission; (9) giving the public utilities commission power over the issuance and sale of securities and the assumption of other financial obligations by public utility companies; (10) reduction of penalty of twelve per cent on unpaid real estate taxes; (11) exempting married women from paying personal property tax; and (12) making more liberal allowances from the teachers' pension fund. No specific measures were presented covering the other nine recommendations.

Texas. Governor Ross D. Sterling made thirty recommendations in his short message of January 21. Three were approved in substantially the

[2] Letter of Roy I. Kimmel.

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same form as submitted; seven others were approved in compromise form; eighteen were lost. No bills were submitted on the other two. The measures approved were: (1) more adequate equalization of educational opportunity between country and city; (2) revision of the tax laws to lighten the burden on real estate (mostly in the form of constitutional amendments); and (3) improved care of dependent children. Those approved in compromise form were: (1) segregation of prisoners; (2) reform of criminal procedure; (3) relief of overcrowding at state hospitals for insane; (4) development of the state park system; (5) fixing priorities in the allotment of public and flood waters; (6) conservation of natural resources; and (7) reorganization of the state administrative machinery. Those lost included: (1) modernization of the penitentiary; (2) establishment of a state bureau of criminal identification; (3) expansion of the highway program; (4) refund to counties of money spent on trunk highways; (5) imposition of severance taxes on minerals; (6) coöperation with other states to protect cotton growers; (7) eight-hour day on public works; (8) minimum wage law for women and children; (9) more liberal appropriations to the state department of labor; (10) better protection of employees in dangerous occupations; (11) extension of workmen's compensation to employees on the highways; (12) adequate regulation of public utilities; (13) encouraging the use of outside capital in the state; (14) strict enforcement of the anti-trust laws; (15) simplification of court procedure; (16) soil conservation and reclamation; (17) increased facilities for the care of the tubercular; and (18) reapportionment.

Nebraska. Governor Charles W. Bryan proposed thirty-five subjects for legislative action in his message of January 8. Of these, only four received legislative approval, three others were partially approved, one did not require legislative action, and the remaining twenty-seven were lost. Those approved were: (1) memorial to Congress on Muscle Shoals; (2) memorial to Congress on the "lame duck" amendment; (3) retention of gasolene tax at present rate; and (4) amendment of the primary law to prevent a repetition of the Norris incident. Instead of memorializing Congress to reduce the tariff as requested by the governor, a resolution was passed asking the U. S. Tariff Commission to raise the tariff on corn. Irrigation districts were authorized to own and operate electric power plants, but nothing was done to encourage the creation of *ad hoc* districts for the operation of such utilities. A recommendation for reduced state taxes was met by a slight reduction. The legislature refused (1) to memorialize Congress on the McNary-Haugen bill, (2) to authorize the public development of water power resources; (3) to petition Congress to construct flood water reservoirs in western Nebraska; (4)

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to authorize all cities to establish municipal gasolene stations; (5) to create an executive council; (6) to alter the administrative code as requested by the governor; (7) to discontinue expenditures for capital outlays; (8) to pass an income tax law; (9) to repeal the intangible tax law; (10) to reënact the bank guaranty law; (11) to require that security for bank depositors be posted with the state; (12) to establish state savings banks; (13) to repeal the law guaranteeing state and county funds; (14) to require state banks to have capital and surplus of at least ten per cent of deposits; (15) to require that published bank statements show the amount of assets pledged to secure loans or preferred deposits; (16) to prevent chain banks from absorbing state banks; (17) to provide that all road materials should be purchased by the state; (18) to exempt from tax gasolene used in farmers' tractors; (19) to make women eligible for jury duty equally with men (the women refused an optional jury duty statute); (20) to create a committee to study old age pensions; (21) to remove the party circle from the ballot; (22) to make punishment for crimes of violence more severe; (23) to repeal the indeterminate sentence law; (24) to make consent of trial judge essential to pardon and parole; (25) to raise the minimum penalty under the habitual criminal act in felony cases to twenty years; (26) to leave separate trials in felony cases to the trial judge; and (27) to permit trial judges to discuss evidence with the jury. A proposal by the governor to restore double liability for bank stockholders had already been settled by constitutional amendment.

Minnesota. The thirty-five recommendations made in Governor Floyd B. Olson's message of January 7 were more successful than those of most of the governors whose proposals have been reviewed. Nine were approved; the purpose of four others has been accomplished without legislation; the remaining twenty-two were lost, one by a veto of an act which was designed to go further than the governor intended. The measures approved were: (1) provision of public work for the unemployed, including the construction of a state office building, institutional buildings, and an enlarged road program; (2) a bond issue to facilitate the road program, to be retired from the gasolene tax; (3) a "prevailing wage" law for public work; (4) preference to Minnesota products on public work; (5) creation of a state conservation board; (6) enlargement of the state forest nursery; (7) merit system for the employees of the conservation department; (8) a constitutional amendment to enable the state to exchange lands with the federal government for forest purposes; and (9) creation of a parole board with a full-time chairman. During the session, the newspaper gag law, which the governor had asked to have repealed, was declared unconstitutional by the United States Supreme Court. By administrative order, the governor limited the working hours

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per day and the working days per week, and established preference for residents of Minnesota on all public work.

The measures recommended, but lost in the legislature, include: (1) requirement that during the depression public work be done by hand rather than by machine, where practicable; (2) passing appropriations at least one week before adjournment; (3) repeal of all per capita tax limit laws; (4) further reclassification of property for taxation; (5) payment by the state of a definite sum per acre for forest lands; (6) appropriation for a land economic survey; (7) public development of water-power resources; (8) memorial to Congress urging federal generation of electricity in the Mississippi River in connection with navigation works, for sale to municipalities; (9) creation of a commission to study public utility regulation; (10) further extension of supervision of the railroad and warehouse commission over telephone companies; (11) repeal of the Brooks-Coleman law, relating to franchises of public utilities; (12) addition of twelve police officers to the state bureau of criminal apprehension; (13) giving the prosecuting attorney the right to reply to the argument of counsel for the defense in criminal cases; (14) giving county attorneys power to file informations in criminal cases; (15) chain store tax; (16) compulsory old age pension law; (17) uniform primary election ballot (open primary); (18) trial by jury for contempt of court in labor disputes; (19) granting a hearing as prerequisite to the issuance of injunctions in labor disputes; (20) exclusion of labor unions from the operation of anti-trust laws; and (21) establishment of a state printing plant. The act which was vetoed would have established a metropolitan sanitary district in the Twin City area to control the pollution of the Mississippi River by sewage.

California. The recommendations of Governor James Rolph, Jr., to the legislature in his message of January 6 were on the whole very hospitably received. Of twenty-four subjects mentioned, twelve were approved, six others were approved in part, three were lost, and no action was taken on three others. Those approved were: (1) enlargement and modernization of state welfare institutions; (2) enlargement of state prisons to give opportunity for segregation and wholesome employment for inmates; (3) centralization of supervision over local taxation, including the creation of a state agency for fact-finding in taxation for state and municipalities; (4) restrictions on the levy of special assessments for local improvements; (5) oil and gas conservation; (6) amendment of anti-trust laws to permit certain trade agreements; (7) imposition of more severe penalties for the evasion of the gasolene tax, and shortening of period for paying the tax; (8) easing of burdens of assessment in reclamation and irrigation districts; (9) study of overlapping

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services of educational institutions; (10) fairer distribution of highway improvements between rural and urban areas and between sections of the state; (11) permitting the construction of state highways through incorporated cities; and (12) codification of the law relating to building and loan associations. Those approved in part include: (1) further development of institutions for the blind and feeble-minded (only the latter group was taken care of, although the "needy blind" law was revised); (2) no new sources or increased rates of revenue (marine insurers were added to those taxed, and provision was made for a state ad valorem tax on property in the event of a deficiency); (3) keeping special appropriations (outside the budget) to the lowest possible amount (the finance director was active during the session to discourage such appropriations, and all of those made were reduced by the governor by about ten per cent); (4) reapportionment without regard to sectional, individual, or party interests (San Francisco is dissatisfied and the San Joaquin valley is somewhat under-represented); (5) abolition of toll bridges (a study is to be made of the feasibility of acquiring the most important toll bridge in the state); (6) changing term of office of all members of boards and commissions and of all officers to permit an incoming governor to make appointments to all positions at the time of inauguration. Twenty-one tenure bills were passed, providing for "staggered terms" for members of as many boards and commissions. The governor is given one new appointment to each board on January 15 after his inauguration, and another new appointment or two to each board each year or two thereafter, depending on the number of members. The governor's recommendation that a general plan of water conservation and utilization be adopted did not prevail; but existing projects were continued, and a few new ones were started. This problem is being worked upon at present by the water resources commission and an interim joint legislative committee. Proposals for a new actuarially-sound teachers' retirement act and a teachers' tenure law were introduced in accordance with the governor's recommendation, but both were lost. No action was taken on the governor's suggestion (1) that the home market be protected for the benefit of California farmers; (2) that utilities be regulated by officials friendly to the idea and spirit of regulation (the governor can deal with this through his appointments); and (3) that the mining industry be stimulated and revived.

Wisconsin. Governor Philip F. LaFollette was quite successful with his recommendations to the legislature. Of thirteen proposals made in his message of January 15 and three others made in a subsequent message in June, nine were adopted as recommended, one was followed in part, and six were lost. Those adopted, however, were, for the most part, the major items recommended.

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Proposals approved were: (1) creation of a legislative council composed of representatives of the legislature, representatives of business appointed by the governor, and the governor himself, to sit between legislative sessions and prepare a legislative program; (2) proposal to the people of a constitutional amendment to establish the initiative and referendum (since constitutional amendments in Wisconsin must be proposed by two successive legislatures, there must be another approval in 1933 before the people may vote on the proposal); (3) inauguration of a grade-crossing elimination program to relieve unemployment, financed by an increase in the gasolene tax; (4) decreased taxes on real estate and increased taxes on large incomes (this was accomplished by omitting a state levy and relieving the counties of some road maintenance formerly financed through general property tax, and by increasing the income tax rates in the higher brackets); (5) extension of the period for the audit of income tax returns, enabling the state to go back further in detecting delinquencies and errors and to collect back taxes; (6) repeal of a law which provided for progressive reduction of taxes on life insurance companies, thus stabilizing the tax at the current rate; (7) revision of the law relating to the use of injunctions in labor disputes (a comprehensive labor code was adopted of which this is a part); (8) creation of an interim committee on unemployment; and (9) creation of a similar committee to study the banking problem. The two committees just mentioned reported to a special session of the legislature which met on November 24.

The administration power and public utility program consisted of two constitutional amendments and three bills. Of these, the constitutional amendments and two bills were approved. These included: (1) an amendment, already once approved, to permit municipalities to issue mortgage bonds against utility plants without having such bonds come under the constitutional five per cent debt limit; (2) an amendment (first adoption) to permit the state to acquire water power and to generate and distribute electricity; (3) an act creating a state utility corporation to develop plans for a unified system of generating and supplying electric power in all parts of the state; and (4) revision of the public utilities law providing for much stricter regulation of such utilities than heretofore. The bill which was lost would have authorized municipalities to establish competing services with existing public utilities.

The other bills lost included: (1) an amendment of the election laws to declare elected any candidate who receives a majority vote in the primary; (2) taxation of all dividends as income, regardless of the source from which derived; (3) repeal of the reciprocal clause applying to the taxes of foreign fire insurance companies; (4) repeal of the reciprocity clause of the inheritance tax law; (5) strengthening of the corrupt prac-

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tices act; and (6) licensing of chain stores (was passed by both houses, but lost under a technicality in a filibuster at the end of the session).

Pennsylvania. On entering upon his second term, Governor Gifford Pinchot proposed seventeen subjects for legislative action. Eight of these were presented in his message of January 20, and nine in a message dated February 10. Of the eighteen, only three were approved by the legislature; one more, while disapproved by the legislature, was accomplished by administrative action. Ten others were lost, and no bills were introduced on the other three. The three successful proposals were: (1) to add 20,000 miles of road to the state highway system; (2) to prevent the unfair use of injunctions in labor disputes; and (3) to propose an amendment to the constitution to allow the state and its counties to grant old age pensions. While the governor's recommendation that the famous coal and iron police be abolished was not approved, he gained the same result by revoking the commissions of all such officers in the state.

Most of the recommendations were disapproved, including some of the major planks in the administration program. These included: (1) abolition of the public service commission; (2) creation of a "fair rate board;" (3) revision of the election laws to prevent fraud; (4) assistance to disabled ex-service men; (5) stopping stream pollution; (6) reducing taxes on business; (7) no new taxes (a tax was placed on the gross receipts of motor vehicle transportation companies); (8) study of unemployment insurance; (9) reduction of inheritance tax; and (10) exemption of small estates from inheritance tax. Subjects mentioned in the messages but not acted upon by the legislature included: (1) publicity for all state activities; (2) strict enforcement of the prohibition act; and (3) prevention of political assessments of public employees. These were left to be handled by administrative action.[3]

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State Legislation on Public Utilities in 1931. Successful regulation of public utilities by state agencies was a subject of dominant interest to the legislators in a majority of the American states in 1931. This con-

[3] *Summary*

Governor	*Proposals*	*Adopted*	*Adopted in part*	*Per cent adopted*	*Lost*	*Per cent lost*	*No bills introduced*
Rolph of Calif.	24	12	6	75	3	12½	3
Cross of Conn.	28	6	2	28	11	39	9
Olson of Minn.	35	9	0	25	22	63	4
Bryan of Nebraska	35	4	3	20	27	77	1
Pinchot of Pa.	17	3	0	17	11	64	3
Sterling of Texas	30	3	7	33	18	60	2
LaFollette of Wis.	16	9	1	62	6	38	0

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clusion is supported by the abundance and significance of the legislation on that subject enacted by thirty-nine of the forty-three legislatures holding sessions during the year.[1]

This legislation readily lends itself to the following significant topical classification: strengthening and extending state regulation; regulating holding companies; rates and rate bases; public ownership, operation, and development; rural electrification; taxation; and regulating motor carriers.

Strengthening and Extending State Regulation. Messages of at least six governors indicated that in their opinion the experiment with regard to utilities regulation under present agencies and laws is more or less of a failure. Governor Wilbur L. Cross, of Connecticut, informed the legislature that "at present our public utilities commission has inadequate jurisdiction over rates and services of light and power companies except on complaint, [and] . . . no jurisdiction over the accounting of so-called public service corporations, and their issue and sale of securities, or their assumption of other financial obligations."[2] The three bills embodying the governor's recommendations were voted down by both the House and Senate.[3]

Governor C. Ben Ross, of Idaho, reported: "There is a growing dissatisfaction with the results obtained in the operation of the public utilities under our present public utilities commission." He recommended that the commission be reduced to one man, and that his salary be placed at a figure to attract an outstanding individual to the office.[4] The bill embodying his plan failed to pass the legislature.[5]

Governor Dan W. Turner, of Iowa, after pointing out that Iowa is one of the few states "without adequate law regulating and controlling" the activities of public service corporations, recommended the creation of a public service commission with powers of regulation applying to all forms of utility enterprises.[6] A bill embodying the governor's plan was rejected by the House by a vote of 67 to 34.[7]

Governor Harry H. Woodring, of Kansas, questioning the effectiveness of control and regulation as exercised by the public service commission, said that he was "convinced that current telephone, gas, and electric rates demonstrate that the law does not now achieve the desired result."[8]

Governor Gifford Pinchot, of Pennsylvania, left no doubt regarding

[1] The legislatures of Arkansas, Tennessee, Utah, and West Virginia, although in session, enacted no significant legislation on the regulation of public utilities.

[2] Connecticut, *Senate Journal*, 1931, p. 60.

[3] *Ibid.*, pp. 278, 826-831 (Senate Bills No. 434, 436, 437).

[4] *U. S. Daily, Supplement*, Feb. 16, 1931, p. 52.

[5] Senate Bill No. 59.

[6] *U. S. Daily, Supplement*, Feb. 16, 1931, p. 52.

[7] House Bill No. 437.

[8] *U. S. Daily, Supplement*, Feb. 16, 1931, p. 52.

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his opinion of the public service commission of that state when he said: "Whenever, as in Pennsylvania, the public service commission is the cat's-paw of the corporations instead of the protector of the people, widespread injustice is inevitable."[9]

Governor Ross S. Sterling reported that "Texas has no adequate utility regulation; therefore we advocate legislation for the proper protection of the consuming public."[10]

The most emphatic denunciation of the existing methods of regulation came from Governor Julius L. Meier, of Oregon, who informed the legislature that regulation as it now exists "has proven an utter failure."[11] He proposed a plan of complete reorganization which the legislature substantially put into effect.[12]

On the other hand, the governors of Illinois, West Virginia, and California commended the successful administration of their public service commissions. According to Governor Louis L. Emmerson, the Illinois commission, "completely reorganized during the past biennium," gives "prompt consideration to all matters before it. . . [and] has a well defined and comprehensive program for the next biennium."[13]

Governor James Rolph, Jr., of California, indicated the success of regulation in that state as follows: "Effective regulation of public utilities has been one of the best and most outstanding achievements of the progressive movement in California. Its benefits have fallen alike upon the public and the companies. Formerly, the great corporations were the masters of the state. Regulation has made the utility corporations public servants entitled to public respect and assistance."[14]

Bills providing for drastic reorganization of the regulatory agencies were introduced in the legislatures of Idaho,[15] Iowa,[16] Texas,[17] West Virginia,[18] Pennsylvania,[19] and Oregon.[20] Such bills attained passage only in Oregon.

The proposals considered by the legislature of Pennsylvania deserve more than passing notice. Reports on proposed reorganization were made by Senate and House investigating committees. The Senate committee

[9] *U. S. Daily, Supplement,* Feb. 16, 1931, p. 54.
[10] *Ibid.,* p. 54.
[11] *Ibid.,* p. 53.
[12] See below, p. 87.
[13] *U. S. Daily, Supplement,* Feb. 16, 1931.
[14] *Ibid.,* p. 51.
[15] Senate Bill No. 59 proposed the abolition of the public utilities commission and substitution of a single commissioner.
[16] House Bill No. 343 proposed to create a public service commission with broad powers.
[17] House Bill No. 306 proposed to create a public utilities commission.
[18] House Bills Nos. 109 and 74 proposed to create a "people's counsellor" and elect by popular vote the counsellor and commission.
[19] House Bills Nos. 1630, 1631, 1632.
[20] House Bill No. 77.

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recommended that the power of appointing the members of the commission be vested in the state superior court in order that it might "tend to remove the commission from politics." Governor Pinchot, in opposition, commented that this "would not only leave the commission in politics but drag the superior court in with it."[21] The Senate committee further recommended the creation of a "people's counsel," to represent the rate-payers, under the jurisdiction of the attorney-general.[22]

The House committee, following Governor Pinchot's suggestions, by a vote of five to two, reported that "the public service commission of Pennsylvania has lost the confidence of the people," and recommended abolishing the present commission and substituting a "fair-rate board." The committee also recommended that the members of the board be appointed and removed by the governor in order that "definite responsibility for the actions of the public service commission be concentrated in the chief executive of the commonwealth."[23] Bills embodying the above features were approved by the House, but failed of passage in the Senate.

The reorganization of the public utilities regulatory agencies in Oregon was probably the most significant utilities legislation in 1931. The existing public service commission was abolished and a "commissioner of public utilities of Oregon" was substituted. The commissioner is appointed for a four-year term. He may be removed by the governor "for any cause deemed by him to be sufficient," following presentation of charges and a hearing; and removals are not subject to court review.[24] No other state has gone so far in placing the removal power in the hands of the governor.

In addition to the functions hitherto vested in the commission, the commissioner is given the duty of acting as the representative of "the patrons, users of the service, and the public generally in all controversies respecting rates, charges, valuations, services, and all matters of which he has jurisdiction . . ., to protect said patrons [etc.] . . . from unjust and unreasonable exactions and practices, and to obtain for them adequate service at fair and reasonable rates."[25] He is, furthermore, authorized to investigate rates, services, etc., on his own initiative.[26]

The almost universal need of increased appropriations for salaries, in order to secure efficient members of the staff, and for expert assistance, was recognized in only a few states. Salaries are still too low in most instances to draw eminent lawyers, business men, engineers, and accountants into the service of state regulation of utilities. The recently created single commissioner of Oregon receives an annual salary of $7,500.[27]

[21] *U. S. Daily*, April 17, 1931, p. 8.
[22] *Ibid.*
[23] *U. S. Daily*, May 28, 1931.
[24] Oregon, *Laws*, 1931, Chap. 103, Sec. 1.
[25] *Ibid.*, Sec. 5.
[26] *Ibid.*, Sec. 6.
[27] *Ibid.*, Sec. 1.

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New Hampshire increased the salaries of the commissioners to $5,000 a year,[28] a sum considerably below that paid the state judges. The financial difficulties of utilities regulation in New Hampshire, it is believed by the commission, will be materially lessened by an act of the 1931 legislature allowing the commission to charge the cost of a rate investigation back to the utility involved.

The significant provision of the act is as follows: "Whenever any investigation shall be necessary to enable the commission to pass upon the reasonableness of the rates or charges by a public utility, the utility shall pay to the commission its expenses involved in the investigation, including the amounts expended by it for experts, accountants, or other assistants and the salaries and expenses of all employees of the commission for the time actually devoted to said investigation . . . such expenses with six per cent interest to be charged by the utility to operating expenses and amortized over such period as the commission shall deem proper and allowed for in rates to be charged by the utility."[29]

The significance of the act is that investigations will no longer be avoided for lack of appropriations, and that the side of the public in a case or hearing may now be as well prepared and presented as the side of the utility invariably is.

A law of similar nature was enacted by the legislature of Kansas, providing that the utilities shall pay the cost of investigations conducted by the commission relative to reasonableness of rates and adequacy of service.[30]

The legislatures of Kansas, South Carolina, and Oklahoma appropriated substantial sums for the investigation of rates and practices. The public service commission of Kansas was granted $100,000 for the next biennium to be used in investigating rates and practices of public utilities and holding companies and to defray the expenses of litigation, if any, growing out of such investigation.[31] In South Carolina, $50,000 was made available for an investigation of "rates charged for electricity throughout the state." The investigation was to be conducted by a committee of five citizens appointed by the governor, and a report submitted to the governor and railway commission by January 19, 1932.[32] The commission in Oklahoma was authorized to expend $50,000 for the purpose of determining the valuation of utilities for rate-making purposes.[33]

The staffs of the commissions of Ohio and Vermont were somewhat strengthened by legislative acts. In the case of Ohio, assistants to be as-

[28] New Hampshire, *Laws*, 1931, Chap. 149.
[29] *Ibid.*, Chap. 127.
[30] Kansas, *Laws*, 1931, Chap. 240.
[31] *Ibid.*, Chap. 31.
[32] *U. S. Daily*, June 27, 1931.
[33] Oklahoma, *Laws*, 1931, Chap. 20, Art. 10.

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signed to the commission may be appointed by the attorney-general;[34] while the commission in Vermont was authorized to employ experts.[35] A Wisconsin bill authorized the commission of that state to employ additional statisticians and provided the necessary funds for their salaries.[36]

The authority and duties of the commissioners in many states were substantially increased. Space permits the mention of only the outstanding changes. (1) The Indiana commission was authorized to grant a utility the right to relocate its facilities when in the opinion of the commission the local authorities had unjustly withheld their consent.[37] (2) "Public heating companies" in Maine were added to the list of public utilities and brought under the "jurisdiction, control, and regulation" of the public utilities commission.[38] (3) Water companies in New York State were brought under the general jurisdiction and control of the public service commission.[39] (4) "Certificate of convenience and necessity" must be obtained from the Vermont commission before a utility in that state may begin operation; likewise approval for the sale or lease of property must be secured from the commission.[40] (5) Compulsory reporting and forms for reports and accounts of public service companies were placed under the jurisdiction of the corporation commission of North Carolina.[41] (6) A noteworthy addition to the powers of the Wisconsin commission is the authority to prohibit the declaration of dividends on common stocks when, after a hearing, it appears that the capital of the company is impaired.[42]

Regulation of Holding Companies. Legislation intended to bring holding companies under the jurisdiction of state commissions was considered at length by the legislatures of at least six states. Such proposed legislation failed to receive the approval of both houses in Missouri and Pennsylvania, while the legislatures of Kansas, North Carolina, Oregon, and Wisconsin enacted precedent-making laws in that field.

The Kansas law provides that no foreign holding company may acquire the stock or control of a local utility without first agreeing to inform the public service commission as to the transaction between the local utility and the holding company, and "to submit to the jurisdiction of the commission in so far as such transactions affect the rate or charge to be made" by the local utility.[43] Management, engineering, and construction contracts between holding companies and operating utilities, to be

[34] Ohio, *Laws*, 1931; Senate Bill 265.
[35] Vermont, *Laws*, 1931, No. 98.
[36] Wisconsin, *Laws*, 1931, Chap. 183.
[37] Indiana, *Laws*, 1931, Chap. 126.
[38] Maine, *Laws*, 1931, Chap. 126.
[39] New York, *Laws*, 1931, Chap. 715.
[40] Vermont, *Laws*, 1931, Act. No. 101 (Senate Bill 21).
[41] North Carolina, *Laws*, 1931, Chap. 455, Sec. 1.
[42] Wisconsin, *Laws*, 1931, Chap. 183.
[43] Kansas, *Laws*, 1931, Chap. 239, Sec. 1 (2) g.

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legal, must be submitted to and approved by the commission.[44] No service charges, etc., may be included in the operating costs as a basis for rate-making unless and until such costs have been submitted to the commission by the utility "setting out in detail the various items, cost for services rendered, and material or commodity furnished by the holding or affiliated company."[45]

Jurisdiction of the commission is granted over holders of the voting capital stock of all public utility companies under the jurisdiction of the commission to such extent as may be necessary to require the disclosure of owners of one per cent or more of the voting capital stock. The commission was also granted jurisdiction over affiliated companies to the extent of access to all accounts and records relating to transactions between the operating company and the affiliated company.[46]

The corporation commission of North Carolina was authorized to require public service companies to submit for its approval or disapproval all contracts made with any holding, managing, or operating company or company selling services of any kind. A contract or agreement may be disallowed if in the judgment of the commission it is unjust or unreasonable or designed to conceal or dissipate the net earnings of the public service company.[47]

According to an Oregon act, any public utility doing business in the state must file with the public service commissioner all contracts with holding or management companies relating to construction, operation, maintenance, management, service, financial advice, purchase of property, material, or supplies, or use of property. The commissioner is directed to investigate every contract and determine whether it is fair and reasonable and not contrary to the public interest. His approval is necessary before a contract may be executed.[48]

The Wisconsin commission was given extensive control over holding companies by an act requiring a written approval of the commission before any contract or arrangement between a public utility and an "affiliated interest" shall be "valid or effective." The wording of the provision relating to the objects of such contracts is substantially the same as that of Oregon, explained above. By the act, a foreign affiliated company is deemed to be doing business in the state when it is rendering services to a local operating company.[49]

Anti-merchandising laws were enacted in Kansas and Oklahoma. The

[44] *Ibid.*, Sec. 2.
[45] *Ibid.*, Sec. 3.
[46] *Ibid.*, Sec. 1.
[47] North Carolina, *Laws*, 1931, Chap. 445, Sec. 1 (b).
[48] Oregon, *Laws*, 1931, Chap. 103, Sec. 9.
[49] Wisconsin, *Laws*, 1931, Chap. 183.

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laws, which are almost identical in wording, prohibit individuals, firms, or corporations "engaged in the manufacturing, transporting, distributing, or selling of gas, water, electricity, or electrical current" from engaging in the manufacture or sale (wholesale or retail) of articles or products except those "which are the direct product of the business of manufacturing or distributing said utility service."[50] Similar bills were introduced, but not passed, in the legislatures of Alabama, California, Illinois, and Missouri.[51]

Rates and Rate Bases. Little attention was paid in most states to the problem of rates and fair rate bases which figured so prominently in utility discussion in 1930.[52]

The Pennsylvania house investigating committee, following Governor Pinchot's lead, recommended the abandonment of the reproduction-cost new-theory and the substitution of the prudent investment theory for establishing a fair rate base. This could be accomplished, in the opinion of the committee, by compelling the acceptance of the prudent investment plan as a condition for granting charters and approving mergers. A bill embodying the principle was passed by the house of representatives, but was lost in the senate.[53]

Public Ownership, Operation, and Development. Public ownership in the form of municipal, district, or state ownership, and state development of public utilities, received consideration by the legislatures of a dozen or more states. The most advanced scheme for public ownership and operation yet devised in an American state was inaugurated by the Wisconsin legislature, following the recommendations of Governor La Follette. The scheme is embodied in two acts and two proposed constitutional amendments. One act creates the "public utility corporation of Wisconsin." The corporation is to be governed by five directors appointed for ten-year terms by the governor and senate, and is authorized to contract for the purchase or lease and operation of public utilities; to act as advisers to municipalities creating power districts; to make a survey of the resources for production and distribution of light, heat, water, and power; and to recommend a "state-wide plan for . . . an economical development of such resources . . . as will best secure . . . an abundant and cheap supply of these essential services." These functions are to be exercised only upon the approval of the public service commission.[54]

The second act provides for the creation of power districts comprising

[50] Kansas, *Laws*, 1931, Chap. 238, Sec. 1. Oklahoma, *Laws*, 1931; Sen. Bill 96.
[51] *U. S. Daily*, June 13, 1931; April 20, 1931.
[52] See this REVIEW, Feb., 1931, pp. 104-106.
[53] *U. S. Daily*, April 29, 1931; May 1, 1931; May 2, 1931.
[54] Wisconsin, *Laws*, 1931, Chap. 314.

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cities and villages and intervening rural communities. Such districts are authorized to generate, transmit, and sell electrical energy under the jurisdiction of the state public service commission.[55] It is the intention of the promoters of the scheme ultimately to incorporate these districts in a unified state electric power system.[56]

The proposed constitutional amendments provide (1) for state ownership of public utilities, and (2) for an increase in the borrowing capacity of municipalities for the purpose of acquiring public utilities. The second amendment has now been approved by two successive legislatures and will be submitted to a popular referendum, but the first must be approved by the legislature in 1933 before being so submitted.[57]

Laws, somewhat similar to that of Wisconsin, for the establishment of power or public utility districts were enacted by the legislatures of Arizona,[58] Oregon,[59] and Wyoming.[60] The Public Ownership District Power Law of Washington, which was adopted by the voters at the November, 1930, election, also went into effect.[61]

The outstanding legislation in the field of state development of electrical power was the New York act creating the "Power Authority" of New York, whose chief duty is to develop hydro-electric power on the St. Lawrence River. According to Governor Roosevelt, the legislation "definitely establishes the policy and principle of constant, inalienable, public ownership and control for all time to come."[62] The Power Authority consists of five trustees appointed by the governor. They are directed to coöperate with the United States and Canadian governments for the improvement and development of the "international rapids" section of the St. Lawrence River, and to develop hydro-electric power for the benefit of the people of New York State. They are specifically directed to reserve a portion of the power to sell directly to municipalities, and to enter into contracts with companies formed for the sale, transmission, and distribution of the current. The contracts are to be so drawn that the advantages of public ownership may be transmitted to the consumer, and that a greater use of power may be encouraged. "By means of such a contract, it is intended to escape from the technicalities of rate regulation under the public service commission law and to afford consumers the protection of contractual undertakings."[63] The Power Authority is authorized to acquire property by purchase or condemnation under the right of eminent domain.[64]

Several important laws were passed relating to municipal ownership

[55] *Ibid.*, Chap. 50.
[56] *U. S. Daily*, Jan. 23, 1931.
[57] *Ibid.*, June 20, 1931.
[58] Arizona, *Laws*, 1931, Chap. 96.
[59] Oregon, *Laws*, 1931, Chap. 279.
[60] Wyoming, *Laws*, 1931, Chap. 127.
[61] Washington, *Laws*, 1931, Chap. 1.
[62] *U. S. Daily*, March 6, 1931.
[63] *Ibid.*
[64] New York, *Laws*, 1931, Chap. 772.

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and operation. Laws in Kansas, Nevada, and South Dakota made it more difficult for municipalities to sell their publicly owned utilities to private companies. Sale of municipal electric plants by cities in Kansas[65] and Nevada[66] can be made only after a popular referendum; while in South Dakota the vote necessary to approve the sale of municipally-owned public utilities was increased from 55 to 60 per cent.[67]

A comprehensive municipal ownership law was enacted in Nebraska by the initiative and referendum. Among other things, it provides that municipally owned electrical plants may sell electric energy outside the corporate limits of the municipality. Such utilities may also exercise the right of eminent domain.[68]

The cities and towns of Oregon, if they choose, may "determine by contract or prescribe by ordinance" the quality and character of services rendered and the rates charged by public utilities furnishing services in the municipality. The contracts or ordinances must be submitted for the approval of the commissioner of public utilities, but his disapproval may be set aside by a vote of the municipal electorate. Such contracts or agreements are effective for a period of five years, and may not be altered within that period by the commissioner.[69]

Cities and towns in Oregon owning electric plants which do not supply electricity to consumers outside their corporate limits may use the surplus net earnings of such plants for the reduction of general property taxes, but only in case all debts, including interest thereon, have been paid, and an adequate depreciation and replacement reserve has been set up.[70]

Although the Wisconsin legislature seemed to favor municipal ownership in its plan for comprehensive state development of utilities, the senate defeated, by a vote of 16 to 15, a bill authorizing municipalities to compete with existing privately owned utilities.[71]

A South Dakota law conferred upon municipalities the right of municipal ownership and operation of water, light, power, and heat plants.[72]

Rural Electrification. The desire to further rural electrification and to furnish an "abundant and cheap supply" of electrical current for agricultural purposes was an important factor in securing favorable action on the creation of "power districts" in Washington, Oregon, Wis-

[65] Kansas, *Laws*, 1931, Chap. 135.
[66] Nevada, *Laws*, 1931, Senate Bill No. 108.
[67] South Dakota, *Laws*, 1931, Chap. 195.
[68] Nebraska, *Laws*, 1931, Chap. 116 (initiated law, 324).
[69] Oregon, *Laws*, 1931, Chap. 103, Sec. 8.
[70] *Ibid.*, Chap. 275, Sec. 1.
[71] Senate Bill No. 10. See *U. S. Daily*, June 20, 1931.
[72] South Dakota, *Laws*, 1931, Chap. 194.

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consin, Wyoming, and Arizona. The same motive was featured in the argument favoring the creation of the Power Authority in New York. One purpose stated in the act creating the Power Authority was to "permit domestic and rural use [of electricity] at the lowest possible rate and in such manner as to encourage increased domestic and rural use of electricity."[73]

The Maine legislature passed an act having the ambitious title "An Act to Provide Adequate Rural Electric Service, at Just and Reasonable Rates, Throughout the State of Maine."[74] The act provides that in case the company serving a given territory fails to supply "reasonably adequate service" three or more persons injured by such failure may form a corporation "for transmission, use, and sale of electricity" in said territory, and any company authorized to furnish electricity throughout such territory shall supply the new corporation with current at reasonable rates to be prescribed by the public utilities commission.

Taxation of Public Utilities. Ten or more states either considered or enacted new legislation relating to taxation of public utilities. Alabama imposed on electric companies a license tax based on gross receipts.[75] Idaho[76] and South Carolina[77] imposed an excise tax on all electric energy generated within the state. The legislature of Oregon authorized municipalities to levy a privilege tax on public utilities operating in the municipality without a franchise.[78] An export tax and an excise tax on electric energy were considered by the legislature of Vermont, but both measures were set aside for a joint resolution creating a special commission to investigate and report on taxation of public utilities in general.[79] Bills designed to impose an excise tax on hydro-electric plants and a license tax on telephone instruments were killed in the Montana house.[80] It was proposed in the Missouri legislature to "assess and collect a rental tax on all public utilities using public highways, public parks, and state lands." The bill failed.[81]

Special consideration was given by the governors and legislators of Florida, Oregon, and Washington to the proposal to tax publicly-owned utilities. Governor Meier, of Oregon, favored the proposal on the ground that such taxation is necessary to prevent an increased burden of taxation being thrown "on citizens not participating in the benefits of the

[73] New York, *Laws,* 1931, Chap. 772, Sec. 5.
[74] Maine, *Laws,* 1931, Chap. 230.
[75] Alabama, *Laws,* 1931, No. 277.
[76] Idaho, *Laws,* Extraordinary Sess., 1931, Chap. 3.
[77] South Carolina, Act. No. 258.
[78] Oregon, *Laws,* 1931, Chap. 234.
[79] Vermont, *Laws,* 1931, Joint Resolution, 304.
[80] Montana, *Legislature,* 1931, House Bills 277, 386.
[81] Missouri, *Legislature,* 1931, House Bill 255.

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service.'' A bill was introduced in the senate of Washington, at the request of the tax investigation commission, providing for a five per cent excise tax on the gross earnings of municipally-owned utilities.[82] Although no legislation resulted, it is significant that a few American states are considering the policy of taxing municipal plants—a policy which is universally followed in Great Britain.

Regulation of Motor Carriers. At least one-half of the states enacted legislation in 1931 relating to the regulation of motor carriers.[83]

The relation of railroads to motor transportation was considered in a few instances. A Massachusetts act authorized railroads to operate motor carriers. Montana required the board of railroad commissioners, in passing upon applications for ''certificates of convenience and necessity,'' to consider the effect of such competition upon the railroads and other existing transportation companies. On the other hand, the governor of Minnesota vetoed a bill seeking to raise the rates of motor carriers to the level of railroad freight rates, on the ground that the bill would tend ''to force the common carrier trucks out of business and restore to the railroads the so-called less than carload lot transportation business.''[84]

Laws extending the general regulatory powers of the public service commission over motor carriers were enacted in Alabama, Indiana, and Michigan. Regulation of contract or private carriers, as well as common carriers, was provided for in Colorado, New Mexico, Kansas, and Wyoming. The commissions of Connecticut and Maryland (for cities of 50,000 or more) were charged with the regulation of taxicabs. Certificates of convenience and necessity must be procured by motor carriers operating in Georgia, Illinois, and Montana. Mileage taxes or excise taxes were imposed upon motor carriers operating in Georgia, Pennsylvania, and Kansas. The regulation of freight carriers as well as passenger carriers was authorized by the Missouri legislature. Provisions relating to maximum weight, length, and width of trucks or buses were enacted in Alabama, Illinois, Maine, Montana, North Dakota, and Rhode Island. A maximum number of working hours for drivers was established in Ar-

[82] *U. S. Daily,* Jan. 20, 1931; Jan. 21, 1931.

[83] The references to 1931 acts mentioned in this section are: Alabama, Nos. 146, 273; Arkansas, No. 157; California, Chap. 195; Colorado, Chaps. 120, 121, 122; Connecticut, Chap. 8; Georgia, Acts Nos. 10, 11, 12; Illinois, House Bills 1198, 1199; Indiana, Chaps. 86, 152; Maine, Chap. 278; Massachusetts, Chap. 408; Michigan, Acts Nos. 191, 212, 312; Missouri, page 304; Montana, Chaps. 171, 184; New Mexico, Chap. 136; New York, Chap. 531; North Dakota, Chaps. 188, 190; Ohio, House Bill No. 513; Sen. Bill, No. 238; Oregon, Chap. 118; Pennsylvania, Chaps. 255, 354; Rhode Island, Chap. 1784; South Carolina, Acts No. 575; South Dakota, Chap. 183; Texas, House Bill 335; Vermont, Acts Nos. 77, 81; Wyoming, Chap. 133.

[84] *U. S. Daily,* May 1, 1931.

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kansas and Georgia. Agents of motor carrier transportation companies in California must now be licensed. California and Colorado extended state regulation over interstate carriers, as well as intrastate carriers, in so far as the federal constitution permits.

The New York public service commission and the transit commission were given regulatory powers over omnibus companies. Such regulation includes rates, services, and security issues. The Texas railway commission was authorized to prescribe minimum rates for motor carriers. Such carriers holding "certificates of convenience and necessity" were denied the right to act as contract carriers. The South Carolina legislature set up a commission to investigate both freight and passenger carriers in that state and to recommend appropriate legislation.

Conclusion. The legislatures of the American states enacted an unprecedented quantity of utility legislation in 1931. The above analysis of the laws seems to indicate that the public is demanding more drastic regulation, by more capable and better financed commissions with more efficient staffs; and that where the effectiveness of regulation is being questioned, public development is being superimposed upon private operation.

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State Constitutional Development Through Amendment in 1931.[1] From the information furnished by the secretaries of the various states, it appears that constitutional amendments were acted upon finally in only six states in 1931, i.e., Alabama, Kentucky, Maine, Michigan, New York, and Ohio. The states engage more actively in the business of amending their constitutions in the even-numbered years, and accordingly it seems safe to predict that 1932 will see more amendments adopted than was the case last year. There follows a brief statement concerning amendments adopted or refused adoption in 1931 in the states just named.

Alabama. A proposed amendment which would have authorized issuance of bonds to the extent of $25,000,000 for construction, improvement, repair, and maintenance of public roads, highways, and bridges failed of adoption. An amendment (Article XXI) was added to permit the legislature to levy inheritance and estate taxes sufficient to absorb the credit allowed for such state taxes under the provisions of the federal Revenue Act of 1926.[2]

[1] For accounts of state constitutional amendments in the years 1927-30 inclusive, see this REVIEW, Vol. XXIII, pp. 102-106 and 404-409; Vol. XXIV, pp. 367-370; and Vol. XXV, pp. 327-336.

[2] Thirty-four states have taken full advantage of the credit provision; the others

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Kentucky. Two proposals were submitted in Kentucky, but both were rejected by the people. The first would have amended Section 158 of the constitution so that school districts including in their boundaries cities of the first, second, third, fourth, and fifth classes might have incurred indebtedness not to exceed four per cent on the taxable value of the property contained in the districts.[3] The second would have called a constitutional convention.[4]

Maine. Article IV of the constitution was amended so as to readjust the basis of representation of the counties in the senate, with the result that two senators were added, one in Androscoggin county and one in Oxford county.[5]

Michigan. An amendment to Section 14 of Article X of the constitution which would have authorized the state to improve or aid in the improvement of landing fields was defeated by a vote of 375,935 to 263,508. The people also refused another amendment to Article X (proposed Section 21) which would have authorized the state to borrow money and issue bonds therefor for the purpose of paying or refunding outstanding bonded indebtedness.[6]

New York. Six amendments were voted upon by the people of New York State. Three were approved and three were rejected. Rather larger interest than usual was taken in the amendments submitted. Number 3 particularly drew attention for the reason that while it was supported by Governor Franklin D. Roosevelt, it was attacked by ex-Governor Alfred E. Smith. The proposal directed the legislature to appropriate a total of $13,000,000 over a period of eleven years for purchase and reforestation of lands, and was opposed by Mr. Smith on the grounds, among others, that it was improper to issue such a command to the legislature, that the amendment was unnecessary to the carrying out of a sound conservation policy, that the public treasury could ill afford such a large expenditure, that, since the amendment would allow the state to cut and sell lumber, it would put the state into business, and especially for the reason that he saw in the amendment an attempt to benefit private power and pulp-wood interests at public expense. Governor Roosevelt accepted the challenge and insisted that the proposal was in the interest of sound conservation and development. The ratification of the amendment was regarded as a vindication of his political leadership.[7]

Amendment Number 1 abolished the state census and provided for the

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still take only part of the eighty per cent rebate allowed them under Section 301 (b) of the Federal Act.

[3] The vote was: Yes, 31,154; No, 89,370.

[4] Yes, 28,204; No, 97,788.

[5] Yes, 9,709; No, 8,972.

[6] Yes, 262,394; No, 374,754.

[7] Yes, 778,197; No, 554,550.

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use of the federal census as a basis for the formation of state senatorial and assembly districts.[8] Number 2 would have amended Section 7 of Article III of the constitution so as to allow a member of the legislature to receive a civil appointment during his term of office, his seat becoming vacant upon his acceptance of the appointment. This was rejected on the ground that offices might be given to obtain legislative votes.[9] Number 4, for the creation of an additional judicial district in the present district comprising Richmond and Long Island and the creation of additional justiceships, was also rejected.[10] By Number 5 the names of the state department of charities and the state board of charities were changed to state department of social welfare and state board of social welfare, respectively.[11] A proposal to increase the powers of Westchester county officials with regard to the assessment of property for purposes of taxation was rejected.[12]

Ohio. Only one proposal was submitted in Ohio, and it was defeated.[13] It would have authorized the issuance of bonds in the amount of $7,500,000 for the construction and repair of penal and welfare institutions of the state. A constitutional provision now limits the possible creation of indebtedness to the amount of $750,000. Another factor in the proposal which drew opposition was that it would have provided for an appointive board of control to expend the money and manage a sinking fund without supervision by the legislature.

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[8] Yes, 924,228; No, 335,206.
[9] Yes, 424,522; No, 700,117.
[10] Yes, 504,737; No, 578,445.
[11] Yes, 812,545; No, 365,804.
[12] Yes, 497,616; No. 552,559.
[13] Yes, 492,563; No, 764,234.

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Relations of the United States with the Assembly of the League of Nations.* It is now quite well known that, in spite of its non-membership in the League of Nations, the United States has participated for some time in various League activities. The nature and extent of such coöperation have been described and commented on by several writers,[1] and need not be reviewed here. It is sufficient to point out that these relationships between the United States and the League have been going on now for nearly ten years,[2] that they have continually grown in number and importance, that they have become increasingly friendly, frank, and official, and that their continuous character has been recognized and regularized by maintaining a State Department official at Geneva as a sort of "consul to the League."[3]

* This article is in part the result of observations and investigations at Geneva under a grant from the Social Science Research Council, whose aid is gratefully acknowledged. It will be followed by a similar discussion of the relations of the United States with the League Council.

[1] See particularly Manley O. Hudson, "America's Rôle in the League of Nations," in this REVIEW, XXIII, 17-31 (Feb., 1929); Clarence A. Berdahl, "The United States and the League of Nations," in *Michigan Law Review*, XXVII, 607-636 (Apr., 1929); and a series of thirteen articles by the same writer in *League of Nations Chronicle* (Chicago), beginning Feb., 1930. Most useful for the facts of such coöperation are: Manley O. Hudson, "American Coöperation with Other Nations Through the League of Nations," *World Peace Foundation Pamphlets*, VII, No. 1 (1924; revised 1927); Geneva Research Information Committee, "American Coöperation with the League of Nations, 1919-1931," *Geneva Special Studies*, II, No. 7 (July, 1931); Ursula P. Hubbard, "The Coöperation of the United States with the League of Nations and with the International Labor Organization," *International Conciliation*, No. 274 (Nov., 1931).

[2] In December, 1922, Dr. Marion Dorset, of the Bureau of Animal Industry in the Department of Agriculture, sat with the Anthrax Committee of the International Labor Office; in January, 1923, Dr. Rupert Blue, assistant surgeon-general in the Public Health Service, sat with the League's Advisory Committee on the Traffic in Opium; and in March, 1923, Miss Grace Abbott, chief of the Children's Bureau in the Department of Labor, sat with the League's Advisory Committee on the Traffic in Women and Children. The Harding-Hughes administration officially appointed these representatives, but in each case to act only in an "unofficial and advisory capacity."

[3] Mr. Prentiss B. Gilbert, of the State Department, was sent to Geneva in 1930 for the officially avowed purpose of observing and reporting upon the activities of the League. Even before that, however (since 1928), a staff of special observers had been maintained in the American consulate in Geneva, although their purpose was not so frankly avowed. There is now in the Geneva consulate a staff of seven (three consuls and four vice-consuls), of whom five, including Mr. Gilbert, devote their whole time to League "observation."

74381

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In connection with all this coöperation, the official theory seems to have been developed that relationship with minor League organs is perfectly possible, safe, and even desirable, while relationship with the principal or constitutional organs of the League would "entangle" our government in the League itself. It was presumably on some such reasoning that Secretary Hughes made his sharp retort to his pro-League critics in July, 1922, that "whatever your wishes may be, the fact is that the United States is not a member of the League and I have no authority to act as if it were," although he had several weeks earlier permitted the official selection of an American to attend a meeting of a committee of the International Labor Office;[4] and that he labored the theory, in connection with his advocacy of the World Court, that the Council and Assembly, when electing judges of that Court, are not League organs at all, but mere "electoral bodies" with which the United States might safely affiliate. It was likewise on the same reasoning that Secretary Stimson, as recently as May, 1931, refused to permit an official of the Department of Labor to attend the International Labor Conference in Geneva, even as an "observer,"[5] although he and President Hoover had brought about, in other respects, the close coöperation already referred to.

In accordance with this theory, the coöperation of the United States has been in the main with subsidiary, advisory, and semi-autonomous committees and conferences of the League, a participation of great value in itself, but also carrying with it certain disadvantages for the United States.[6] The Council and the Assembly are the organs in which policies are initiated and conferences set on foot, and these same organs likewise pass final judgment upon policies and determine upon courses of action. To the extent that the participation of the United States in League

[4] Mr. Fred C. Croxton was chosen in Feb., 1922, by the commissioner-general of immigration (presumably with the approval of the Secretary of State), to sit with an advisory committee of experts to assist the International Labor Office in its work with respect to immigration. Later changes in plan at Geneva prevented this committee from actually being formed. *Report of Director to Fourth International Labour Conference, 1922,* pp. 18-19.

[5] Miss Mary Anderson, director of the Women's Bureau, had been sent by the Department of Labor for this purpose, but received a cable from Secretary Doak, just before reaching Geneva, ordering her not to attend the Conference, because the State Department felt that "participation of the United States in the Conference of the International Labor Organization would be tantamount to attending a meeting of the Council or Assembly of the League." Miss Anderson is reported to have spent the entire period of the Conference (May 28-June 18) at a nearby mountain resort, carefully leaving Geneva before the Conference began and returning to Geneva a few hours after it closed. *N. Y. Times,* June 20, 1931, p. 5, c. 2; *International Conciliation,* No. 274, p. 95.

[6] These disadvantages are well pointed out by Professor Manley Hudson in this REVIEW, XXIII, 30-31 (Feb., 1929).

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activities has been confined to their intermediate stages only, it may well be that American interests are not sufficiently taken into account. Whether our statesmen have actually on occasion appreciated these disadvantages, or whether they have merely been driven by the inexorable logic of events, the fact is that there has also been a good deal of relationship with both the Assembly and Council as well. These relationships do not seem to be so generally known, and hence deserve attention.

The coöperation of the United States with the Assembly actually began in 1923, in connection with the work of the League in the control of the opium traffic.[7] It will be recalled that an Opium Convention had been entered into in 1912, largely on the initiative of the United States, and to which the United States became a party. That convention was made finally effective by the treaty of Versailles, and the Covenant entrusted to the League of Nations the further "general supervision over the traffic in opium and other dangerous drugs." Thereupon the Netherlands government, which had been given certain administrative duties under the convention of 1912, asked to have those duties transferred to the League.[8] This transfer was made, a section in the Secretariat and an advisory committee were established for carrying on the work with respect to opium control, and a special invitation was sent, at the request of the First Assembly (1920), to the United States to concur in these arrangements and coöperate with these organs.[9] The Harding-Hughes administration refused, however, either to coöperate with the League organs or to consent to a transfer of the functions as desired by all others concerned. It insisted that, "in view of the fact that America was not yet a member of the League, it would look for the present to the Netherlands government to carry out the executive functions imposed by the convention of 1912."[10] Consequently, the Netherlands government was compelled to act as an intermediary for communications between the United States and the League with respect to this matter of opium con-

[7] This incident seems to have escaped public attention. The newspaper notices are quite inconspicuous, the *Literary Digest* having absolutely no mention of it at all; even the pro-League *New York Times* failed to see its significance, tucking away its meager reports in inside pages. See *N. Y. Times*, Aug. 24, 1923, p. 14, c. 2; Sept. 1, p. 5, c. 5; Sept. 2, p. 9, c. 2; Sept. 12, p. 5, c. 1; Sept. 19, p. 4, c. 1.

[8] See Memorandum of Netherlands government to the Secretary-General, Oct. 22, 1920. *Records of First Assembly, 1920*, CI, 181-185.

[9] Assembly resolution of Dec. 15, 1920. *Ibid.*, P 538, 545; *Council Minutes*, XII, 55. The invitation was actually extended by the Netherlands government.

[10] Statement of the secretary of the Opium Advisory Committee to Fifth Committee of Assembly, Sept. 15, 1921. *Records of Second Assembly, 1921*, C II, 345. It may be noted that Germany, also then a non-member of the League and a signatory of the 1912 convention, agreed at once to coöperate with the League.

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trol, and a situation of rather extraordinary difficulty was created.[11]

The Second and Third Assemblies (1921 and 1922) renewed earnest pleas to the United States for coöperation, stressing the fact that effective control of the opium traffic was obviously impossible without such cooperation;[12] and Secretary Hughes finally, on December 6, 1922, accepted a pressing invitation from the Council to participate in the work of the League's Advisory Committee on Opium.[13] Dr. Rupert Blue, assistant surgeon-general of the Public Health Service, was designated "to coöperate in an unofficial and consultative capacity with the committee," and sat with the committee at its fourth session in January, 1923. The result, from the American point of view, was so satisfactory that at the next meeting of the Advisory Committee, in May of the same year, a much more imposing delegation appeared, consisting of Mr. Stephen G. Porter, chairman of the House committee on foreign affairs, Dr. Blue, Bishop Brent, and, as technical adviser, Mr. Edwin L. Neville of the State Department. Although sent to act only in a "consultative" capacity, these gentlemen took an active part in the work of the committee and laid before it certain proposals,[14] which were in principle accepted by the committee and recommended to the Council and Assembly for further action.[15]

Mr. Porter had been for some time genuinely interested in the problem of opium and drug control, and, although violently anti-League, appears to have been impressed with the League's efforts in this direction. At any rate, having learned that his proposals would now come in due course before the Fifth Committee of the Assembly for further exami-

[11] On this matter of opium control, certain communications are still made by the United States to the Netherlands, rather than to the League, although in all other respects there seems no longer any hesitation to engage in direct correspondence with Geneva. See, for example, *League of Nations Doc. C. 13. M. 9. 1931. XI.* (Jan. 5, 1931), reporting seizures of drugs in the United States and in the Philippines, which bears the notation: "Communicated by the Government of the United States of America through the Netherlands Government."

[12] Assembly resolutions of Sept. 30, 1921, and Sept. 19, 1922. *Records of Second Assembly,* P 541; *ibid., Third Assembly,* P I, 137.

[13] This invitation was sent by the Secretary-General on Oct. 14, 1922, under instructions from the Council. *Official Journal,* III, 1203-1204 (Nov., 1922).

[14] It is not necessary, for purposes of this article, to discuss the substance of these proposals. It may be noted, however, that the American delegation acted in a rather high-handed manner, presenting their proposals, haranguing the committee in lengthy speeches, and then withdrawing without even answering questions, returning only after the committee had in effect agreed to the principles involved. See *Provisional Minutes of Advisory Committee on the Traffic in Opium,* 5th Session, esp. 2nd meeting, May 25, 13th meeting, June 1, and 17th meeting, June 4, 1923.

[15] Report of Advisory Committee on the Work of the 5th Session, May 24-June 7, 1923, in *Official Journal,* IV, 1019-1027 (Aug., 1923).

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nation, he dropped a hint that he would like to be present to continue the fight for their adoption and offered to see that an invitation, if forthcoming, should be accepted.[16] This was going considerably faster and farther than the League officials had expected, but they responded promptly. There being no Council session during this period, the matter was brought to the attention of the acting president of the Council, then Signor Salandra (Italy), who telegraphed his colleagues on the Council, and probably others, for their opinion. The difficulties, if any, were easily overcome; the members of the Council gave their approval; and on August 7, 1923, a formal invitation was sent by M. Avenol, the acting secretary-general.

This invitation was very carefully phrased. M. Avenol first called attention to the proposals submitted by the American delegation to the Advisory Committee on Opium, and to their acceptance by that committee, adding that the report of the Advisory Committee, carrying the American proposals, would come before the Assembly in September, and that the Fifth Committee of the Assembly "will doubtless devote an important part of its discussion to the proposals of the American delegation." He stated that in view of the important part played by the American representatives in the conclusions of this report, "the Council felt that it would be right to afford the government of the United States the fullest opportunity of explaining its views on a question in which it has shown such deep interest." He went on to suggest that the opportunity to consult with American representatives would also be "very helpful to the members of the Fifth Committee," and pointed to the practice of the Assembly Committee of having at hand for such consultation representatives of the various technical commissions. "To this end, therefore," he concluded, "I am directed by the acting president of the Council to state that the members of the Council are in agreement that the presence of an American representative in Geneva at the time of the meetings of the Fifth Committee of the Assembly would be of great value, and to extend to the government of the United States an invitation in this sense."

Mr. Porter had evidently carried out his promise to prepare the way for this invitation, for Secretary Hughes, acting with more than his usual despatch in regard to League matters, accepted it in a note sent to the acting secretary-general on August 20.[17] Representative Porter, Bishop Brent, and Dr. Blue, the same persons who had sat with the Advisory Committee, and again Mr. Neville of the State Department as technical adviser, were named as the representatives of the United States "to act, in a consultative capacity, in connection with the Fifth Committee while the

[16] Information supplied officially at Geneva.

[17] The texts of both invitation and reply were circulated to members of the League as Doc. C. 533. M. 221, 1923. XI, but have apparently not been printed.

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recommendations of the Opium Advisory Committee are under consideration.'' In the United States, the announcements of this new collaboration were excessively cautious. The Washington dispatches, evidently inspired by the State Department, gave the distinct impression that the American delegation was being sent to sit with the same body as before, and carefully (also, of course, correctly) explained that ''the American representatives have not sat, and will not sit in the future, as members of the commission. Their status is that of advocates permitted by the courtesy of the nations represented on the commission to argue the American case.''[18]

The records show that the American representatives took seats with the Fifth Committee on September 18, when the opium question was first considered, and were present at five meetings of the committee (September 18-22).[19] Mr. Porter, in particular, participated actively in the discussions, explained in detail the proposals and point of view of the United States, and urged most strongly not only the convening of a conference on the subject of opium, but especially that it be a *League* conference. ''He observed that the conference could no doubt be convened by some state acting independently, but, in his opinion, it would conduce to the success of a conference if it were convened by the League of Nations and consequently supported by the prestige of the League. The United States, therefore, strongly urged the adoption of the resolution providing for the convening of a conference composed of plenipotentiary representatives of the states for the purpose of examining the question of the traffic in harmful drugs and making a report to the League of Nations before the Fifth Assembly.'' Mr. Porter also served as a member of the sub-committee that drafted the committee's resolutions which were later submitted to and adopted by the Assembly itself.[20] The representatives of the United States in this instance participated as completely in the committee's deliberations as did other members, with the exception, of course, that they did not vote. Neither Mr. Porter nor his colleagues appeared officially on the floor of the Assembly itself,

[18] The acceptance of the invitation and the appointment of the delegation do not appear to have been announced to the press from Washington at all, but from Geneva. See *N. Y. Times,* Aug. 24, 1923, p. 14, c. 2. Their sailing was announced, but with no reference at all to the Assembly or a committee of the Assembly, the reference being consistently to an ''opium commission.'' Further, ''it was explained at the White House that much progress was made at *previous sessions of the commission,*'' even this being concealed in a despatch dealing chiefly with Russian recognition. *Ibid.,* Sept. 1, 1923, p. 5, c. 5. The writer does not, of course, claim to have examined all the newspapers for that period, but it seems reasonable to assume that no newspaper would have more information than the *N. Y. Times.* Cf. also *supra,* note 7.

[19] *Records of Fourth Assembly, 1923,* C V, 38-52.

[20] *Ibid.,* 41, 45.

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but active participation with a standing committee of the Assembly is, after all, very near participation with the Assembly, and the records show that the members of the Assembly considered the Americans as their colleagues on this occasion.[21]

That this American participation was useful to the League and to the cause of opium control is certain. Mr. Porter's strong stand for vigorous international action, and particularly for such action under the auspices of the League of Nations, effectively blocked an attempt on the part of some League members to bury opium control at The Hague. It is equally clear that this participation considerably increased the prestige of the United States. The American point of view was presented with clarity and dignity,[22] and the American proposals were incorporated into the committee's report and accepted by the Assembly with a completeness that is scarcely conceivable had representatives not been present. Numerous speakers expressed the satisfaction of the Assembly with this American leadership, and the French member of the Fifth Committee stated rather neatly the general attitude when he said that he had "no doubt that Mr. Porter's advice would be all the more carefully followed because they now knew that they would always have the collaboration of the United States in their campaign".[23]

Although these hopes of continuous and whole-hearted collaboration in the matter of opium control proved much too exuberant,[24] this participation of the United States in the Assembly of 1923 served to hasten

[21] The names of the American delegates are even included among the official list of members of the Fifth Committee, although with the notation that they "represented the United States of America in a purely advisory capacity." *Ibid.*, 6. This and the fact that Porter served on the drafting committee are sufficient evidence that their status was actually somewhat different from that of the technical advisers referred to by way of comparison in the Secretary-General's invitation. See also Porter's closing remarks to his "fellow-members."

[22] Mr. Porter on this occasion carried himself much more tactfully and graciously than previously in the Advisory Committee and later in the Opium Conference.

[23] *Records of Fourth Assembly, 1923*, C V, 52.

[24] The American delegation to the Opium Conference of 1924-25, headed again by Mr. Porter, walked out when that body seemed disposed to modify the American proposals. The resulting opium convention of 1925 did not meet the approval of the United States, and it refused to coöperate under that convention except to send information of drug seizures, through the Dutch government, to the Opium Board. Official American delegates did, however, attend the Conference on the Limitation of the Manufacture of Narcotic Drugs, May 27-July 13, 1931, and signed the convention there concluded, which supplemented and extended the provisions of the Geneva Convention of 1925 as well as of the Hague Convention of 1912. "Unofficial" representatives have been continued on the Advisory Committee, and an official "observer" took part in the Conference on Opium Smoking, in Bangkok, in November, 1931, which was also convened under the Geneva Convention of 1925.

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and invigorate the activities of the League so that a new opium convention was soon agreed to and a continuing machinery of control set up at Geneva. Perhaps equally important is the fact that a precedent had been established that would make similar, or even closer, collaboration possible in the future, whenever the interests of the United States or of the world should demand it.

As a matter of fact, the opportunity for similar collaboration in the work of the Assembly came the very next year. The St. Germain convention for control of the traffic in arms had been negotiated in connection with the Peace Conference, again largely on the initiative of the United States, and had been signed by the American delegates. The Harding-Hughes administration, however, failed to ratify, and Secretary Hughes, in response to repeated requests, finally stated, in September, 1923, his objections to that convention.[25] As soon as the attitude of the United States was known in Geneva, the Assembly and Council began to work out plans for a new convention that would meet these objections, and the Council, with that in view, invited the United States to participate in the work of the League's Temporary Mixed Commission for the Reduction of Armaments, which had been entrusted with the preparation of a new draft convention on the traffic in arms. This invitation was accepted by Secretary Hughes,[26] and the American minister at Berne (first Joseph C. Grew, later Hugh Gibson) sat with that body in February and July, 1924, participating actively in the work of the commission and its subcommission,[27] although "without authority to bind [the] government in any way to whatever conclusions may be reached by the commission." The result was the preparation of a new draft convention, which it was hoped and believed would meet the approval of the United States.[28]

[25] The Secretary-General wrote to the Secretary of State on Mar. 8 and Nov. 21, 1921, and the acting president of the Council (Branting, Sweden) wrote on May 1, 1923, inquiring as to the intentions and objections of the United States. To these inquiries Secretary Hughes responded first on July 28, 1922, stating merely that the United States would not ratify, and on Sept. 12, 1923, giving the reasons. The Secretary-General's letter of Nov. 21, 1921, has apparently not been printed. The texts of the others are found, respectively, in *Council Minutes*, XII, 109, and *Documents of the Arms Traffic Conference of 1925* (Doc. C. 758. M. 258. 1924 IX. [C. C. O. 2]), 11-13; Hughes' letter of Sept. 12, 1923, also in *Official Journal*, IV, 1471 (Nov., 1923).

[26] Letter of Branting (acting president of the Council) to the Secretary of State, Dec. 14, 1923, and reply from Joseph C. Grew, U. S. minister at Berne, to the Secretary-General, Feb. 2, 1924. *Official Journal*, V, 378-379, 453 (Feb., Mar., 1924).

[27] The minutes of these sessions are found in *Documents of the Arms Traffic Conference*, 38-102, 167-209.

[28] The report of the commission shows clearly the ingenious way in which the several objections of Mr. Hughes were met. See Report of Temporary Mixed Commission to Council, Sept. 30, 1924. *Official Journal*, V, 1605-1609 (Oct., 1924).

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In view of the fact that this report, which American representatives had thus helped to formulate, would have to be accepted by the Assembly, and having in mind the eagerness of the United States to participate the year before in respect to opium, it seemed altogether probable that that nation would be glad to participate with the Assembly again in respect to the work in which it was now showing a new interest. Hence, M. Beneš, as acting president of the Council and as the Council *rapporteur* for armaments questions, proposed, on August 14, 1924, that the United States be invited this year to participate in the work of the Third Committee of the Assembly, in order to furnish that government "with an opportunity of expressing its views on the question of the control of the international traffic in arms at the time when this question would be discussed." There being no Council session at this juncture, the proposal of M. Beneš was telegraphed to his colleagues on the Council, all of whom favored it. Accordingly, the Secretary-General, on August 18, sent a letter to the Secretary of State, formally inviting the United States government to send representatives to be present at the discussions of the Third Committee on this question of the traffic in arms.[29]

This invitation was declined, however, by Secretary Hughes, in a communication to the Secretary-General sent through Minister Gibson on August 29. It was pointed out in this note that the United States government had already fully explained its views through its representatives on the Temporary Mixed Commission, and "it is felt that they could not be usefully amplified by having a representative present at the meetings of the Third Committee."[30] In spite of this rebuff, friends of the United States in Geneva began a move again in 1925 to invite the United States to the Sixth Assembly in September of that year. Out of this came tentative proposals to invite any or all non-member states to either the Assembly or the proper Assembly committee during the consideration of matters of concern to such non-member states, although it appears that the purpose was essentially to give the United States in particular a further opportunity to explain its position with respect to the matter of opium control, in view of its disapproval of the opium convention re-

[29] Report of M. Beneš to Council, Sept. 9, 1924. *Ibid.*, 1294-1295.

[30] Text of reply in *ibid.* Mr. Hughes did, however, indicate that the United States would be disposed to participate in an international conference. Accordingly, the Assembly recommended and the Council summoned such a conference, which was held in May and June, 1925, and which was attended by an official American delegation, headed by Representative (later Senator) Theodore E. Burton. A new convention regulating the traffic in arms was there agreed upon and was signed by the American delegates, but has not yet (December, 1931) been reported out of the Senate committee on foreign relations.

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cently negotiated. For one reason or another, these proposals came to naught, no invitation was issued, and the United States did not again have official relations with a League Assembly until 1931.

In his opening address to the Twelfth Assembly, on September 8 of that year, Signor Grandi, the Italian foreign minister, referred particularly to the question of disarmament and suggested the possibility of an armaments truce, at any rate for the duration of the Disarmament Conference to be convened in February, 1932. "A general and immediate agreement between states," he said, "to suspend the execution of programs for fresh armaments would not only set our peoples an example of good-will, but would create a psychological and physical atmosphere of greater calm and confidence, which would do more than any declaration of principles to further the work of the conference and lead to tangible results."[31] To this suggestion there was immediate favorable response by a considerable number of the delegates, and a formal draft resolution was proposed by the delegations of Denmark, Norway, the Netherlands, Sweden, and Switzerland (commonly referred to as the Five-Power, or Scandinavian, Proposal), which was in the nature of a solemn appeal to the nations of the world "to show their firm determination to support the efforts to ensure peace and reëstablish mutual confidence by abstaining, pending the results of the Conference, from any measure leading to an increase in the present level of their armaments."[32]

This resolution was referred to the Third Committee of the Assembly for consideration, and at the meeting of that committee on September 19, its chairman, Dr. Munch (Danish foreign minister), sprang a surprise by proposing that the committee should invite the United States, Russia, and Turkey "to be represented on the committee for the discussion of the armaments truce."[33] The reasons were obvious—these states had taken an active part in the work of the League's Preparatory Disarmament Commission, and no genuine armaments truce could be effective without their coöperation. Nevertheless, there were objections to the proposal,

[31] *Verbatim Record of Twelfth Assembly,* 2nd Plenary Meeting, p. 7. (The final records of this Assembly had not been printed when this article was written, hence the citations are to the provisional records—the *Verbatim Record* for plenary meetings, and the *Journal* for committee meetings. Much of the information was obtained through personal observation.)

[32] *Verbatim Record,* 7th Plenary Meeting, p. 10.

[33] While this action was apparently a genuine surprise to most of the committee members, it was probably no surprise to the United States government, a well-informed newspaper correspondent pointing out that "in view of the fact that invitations of this kind have rarely been extended to the United States without previous soundings to assure acceptance, it is assumed Washington will immediately answer authorizing Wilson to represent it." *N. Y. Times,* Sept. 20, 1931, Sec. 1, p. 3, c. 5.

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particularly by the French delegate (M. Massigli), who "considered whether the committee had the right to take such action, . . . agreed as to the substance of the question, but thought a serious question of principle was involved on which the members of the committee would probably wish to reflect." However seriously these objections may have been intended, they were overcome through brief private discussions, and the committee agreed, first, that all non-members of the League who were to attend the Disarmament Conference should be invited instead of only the three originally suggested; and, secondly, that "the president of the Assembly should be requested to ask the Council to approve the dispatch of an invitation."[34] It would appear that this procedure was suggested because of the precedents of 1923 and 1924, when the invitations to participate with an Assembly committee had in each case been authorized by the Council.

When the committee's proposal was brought to the attention of the president of the Assembly (M. Titulesco, Rumania), he felt that the proposed procedure would intrude upon the proper prerogatives of the Assembly. "When the Assembly was sitting in plenary session," he said, "it was not for the Council to forward an invitation extended by the Assembly, but the latter should take such measures as might be necessary through it own organs." This view was supported by the legal advisers in the Secretariat, and hence the proposal for a Council invitation was abandoned. The Third Committee had made its proposal, however, on a Saturday afternoon; the Assembly was not scheduled to meet in plenary session for several days, and was, moreover, very soon coming to an end. The need for haste was therefore recognized if anything at all were to be accomplished in the matter of an armaments truce; hence M. Titulesco at once summoned a meeting of the General Committee of the Assembly[35] and received from it authorization to act on behalf of the Assembly.[36] Invitations were promptly cabled by M. Titulesco that same Saturday night (September 19) to the governments of ten states, including the United States,[37] "to take part in consultative ca-

[34] *Journal of Twelfth Assembly,* No. 13, pp. 173-174.

[35] The General Committee, constituting a steering committee for the Assembly, is composed of the president, six vice-presidents, the six chairmen of the standing committees (who are also *ex-officio* vice-presidents), and the chairman of the Agenda Committee.

[36] Statement of M. Titulesco to Assembly, Sept. 23, 1931. *Verbatim Record,* 12th Plenary Meeting, pp. 1-2.

[37] The others were Afghanistan, Argentina, Brazil, Costa Rica, Egypt, Ecuador, Salvador, Turkey, and Russia. Two of these, Argentina and Salvador, are League members, but had no delegates at the 1931 Assembly, and hence were included in this special invitation. Brazil, Costa Rica, Egypt, and Turkey sent representatives, Argentina and Russia stating their inability to do so for lack of time.

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pacity in discussion of Third Committee relative to resolution on armaments truce."

The United States was the first to reply, the invitation being accepted in a communication addressed on Monday morning, September 21, by the American minister to Switzerland, Hugh R. Wilson, on behalf of the Secretary of State, to Sir Eric Drummond, the Secretary-General of the League. Mr. Wilson, who had already been in Geneva for several days, was designated as the representative of the United States, and took his seat with the Third Committee that same afternoon, the chairman having jocosely invited him to come down from the gallery and take a seat on the floor. Mr. Wilson participated henceforth in the meetings of the Third Committee (six altogether, September 21-28), taking an active part in the discussions and serving on the sub-committee to draft a definitive resolution.[38] He warmly supported the Italian proposal for an armaments truce,[39] replied very pointedly to the Japanese suggestion that the whole matter be postponed to the Disarmament Conference itself, and made it perfectly plain throughout that the Hoover administration desired an immediate and binding agreement for this purpose.[40] Opposition from some delegations (particularly the French, Polish, and Japanese) to certain features of the Italian proposal made it necessary to reach a compromise agreement, and Mr. Wilson, as a member of the sub-committee, joined in drafting the final proposal of the committee and gave it his support, although he clearly would have preferred a stronger resolution.

The Third Committee's proposal,[41] for which the United States was thus in part officially responsible, was unanimously adopted by the Assembly at its final session on September 29. The collaboration of "a duly authorized representative of the United States of America" was particularly and graciously referred to by the *rapporteur* for the Third Com-

[38] *Journal of Twelfth Assembly*, Nos. 14-20, esp. pp. 208, 246, 270.

[39] The Italian proposal was formally laid before the Third Committee on Sept. 21, just after Mr. Wilson had taken his seat. It proposed a "gentlemen's agreement" to be then and there entered into for a truce of one year, beginning Nov. 1, 1931, on the following basis: (1) no increase of expenditures for land armaments; (2) no new naval construction; (3) no construction of military aircraft except as replacements. *Ibid.*, No. 14, p. 208. Full text circulated as Doc. A. III. 19. (Sept. 24, 1931).

[40] He made the reservation, however, that the United States destroyer-building program, for which contracts had already been let, should not be halted, in view of its connection with the matter of unemployment relief.

[41] This resolution was in the nature of a solemn appeal from the Assembly to the various governments to undertake such an armaments truce for one year, and to indicate their intentions in this respect by Nov. 1, 1931. The proposal was purposely left rather vague, and it seemed to be understood that it would not prevent the execution of construction already begun. *Journal*, No. 20, p. 301.

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mittee (Senor de Madariaga, Spanish ambassador to the United States), and by others, including the president of the Assembly (M. Titulesco), who, in his closing address, declared that, although such coöperation had been entirely voluntary and could not be said to have increased the obligations of the United States, he felt "bound to add that the result has been to increase the prestige both of the League and of the United States in the eyes of the world."[42]

That this collaboration of the United States with the Twelfth Assembly in 1931 had definite and tangible results can hardly be denied. The very presence of an accredited American representative, and especially of one with prestige and knowledge, was most heartening to those genuinely desirous of disarmament and of some immediate action toward that end. Mr. Wilson's frank exposition of the American government's viewpoint and his prompt and firm, yet tactful, support of a strong resolution served to allay opposition and to bring about the desired end.[43] But the real significance of this collaboration in 1931, as well as the earlier collaboration with another Assembly in 1923, probably lies in the fact that another precedent has been set, and the way has thus been made much easier for further, and perhaps even closer, collaboration in the future. In spite of official denials by the administration that any such close collaboration is intended,[44] these developments can hardly work any other result. That is clearly understood in Geneva, and it was the French delegate (M. Massigli) who most aptly pointed this out in the Assembly. "The first, and perhaps the most important [result]," he said, "is that, on the occasion of this discussion, we have been able not to create but to define, to 'organize,' if I may say so, a precedent enabling us henceforth, in our discussions, to have more frequently associated with us the representatives of the great American Republic who have been sitting with us for the last week. That is a fact of capital importance."[45]

It may be appropriate to recall again the very tentative suggestions

[42] *Verbatim Record*, 16th Plenary Meeting, esp. pp. 9, 12, 16.

[43] By Nov. 1, 1931, 35 states, including the United States, had formally announced their readiness to enter into such a truce. This included also France, Poland, and Japan, those most hesitant at first. The reply of the United States, dated Oct. 30, 1931, is Doc. C. 781. M. 376. 1931. IX. Eighteen additional states accepted later, and on Nov. 14 the Secretary-General announced that the conditions had been fulfilled and that the truce should be considered effective, "unless and in so far as the various governments do not forthwith intimate any objection to this course." Doc. C. L. 293. 1931. IX.

[44] Secretary Stimson, when announcing Mr. Wilson's selection, emphasized the "consultative" character of his participation as evidence that it did not mean an increasing participation by the United States in League affairs. *N. Y. Times*, Sept. 22, 1931, p. 10, c. 5.

[45] *Verbatim Record*, 16th Plenary Meeting, p. 11.

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made in Geneva in 1925 to invite any or all non-member states to the Assembly itself during the discussion of matters of concern to such states. Although nothing came of the proposals at the time, their renewal in the future might be well received. So responsible and conservative a statesman as Lord Cecil seemed to give such a proposition his support in 1931. Referring to the participation of five non-members of the League (including the United States) in the work of the Third Committee, he said: "That, I think, is a fact of more importance even than appears on the surface; it inaugurates a system by which it is to be hoped that it may be possible for those states which are not members of the League of Nations to give their collaboration, assistance, and advice to the League when it is dealing with matters of first-rate importance."[46] So far as the United States is concerned, it would be increasingly difficult, in the light of the developments here noted, to decline such an invitation.

As yet, American representatives have not sat officially on the floor of the Assembly, but only in the galleries and the committee rooms. It becomes somewhat labored, however, to distinguish clearly between the legal or political effect of sitting with a standing committee of the Assembly and sitting with the Assembly itself. Even Mr. Hughes, before he finally quit office as secretary of state, had come around to the theory, quite in advance of his earlier actions, that "if we find our interests affected we must, of course, take part in conferences called by the League of Nations." The Assembly is clearly such a conference, although a regular instead of a sporadic one, dealing at virtually every meeting with some matter affecting "our interests." It seems altogether proper, therefore, that these interests should be protected through representation and expression of point of view, if not through full membership and a vote.

CLARENCE A. BERDAHL.

University of Illinois.

What Constitutes Readiness for Independence? In the past, the principal criterion of a capacity for independence seems to have been the ability to foment such forces of violence and potential insurrection as to make the cost of maintaining external political control greater than the controlling power could bear. The real question has been, not whether the subject people were able to stand alone, but whether the efforts necessary for keeping them in subjection conformed to national policy. While the maintenance of such control has invariably been justified by reference to "the white man's burden" and a "sacred trust of civilization," the nature of this rationalization is sharply challenged by an

[46] *Ibid.*, p. 9.

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examination of the actual instances when the time has been found ripe for a shifting of the "burden" to more willing shoulders. It has almost invariably followed upon outbreaks of such violent disorder, if not actual insurrection, as to make it inexpedient for the controlling power to attempt to maintain the status quo. If complete independence is not granted, some concessions of local autonomy and administrative reorganization placate the disaffected elements and postpone the evil day of final settlement.

Such seems to have been the point of view of the imperialistic powers —one to give little comfort to the cause of nationalism, and to support the claim of nationalistic leaders that their only recourse is to violence. Many of the latter, on the other hand, likewise rely upon a single criterion as to their readiness for independence. It is the criterion of nationalism, or the so-called doctrine of self-determination. Advanced by President Wilson in his Fourteen Points for application to the suppressed nationalities of Central and Eastern Europe, it has become the rallying cry of subject peoples the world over. But, like the single criterion of potential force, it represents only one factor in the situation and is not, by itself, a sufficient indication of the ability of any people to maintain themselves as a responsible member of the family of nations. Furthermore, there is no logical limit to its possible application, since the smallest conceivable minority finds complete moral justification for independence in the evidence of a united desire therefor.

The institution of the mandate system calls for a new interpretation of this problem of readiness for independence. Whether this system was introduced because of a realization of the need for new principles in dealing with subject peoples or because it constituted a workable solution for the rival claims of imperialistic powers, it is clearly stated in Article 22 of the Covenant as the justification for such external control of the mandates that they "are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world." The corollary of this statement would seem to be that when they are "able to stand by themselves" they should be released from such tutelage as is imposed by the mandatory system.

Precisely what is meant by this expression, "not yet able to stand by themselves," is not clear. There is no indication that the authors of it themselves had any clear conception of what the term involves. Does it mean the mere ability to muster sufficient force to repel or discourage any external interference? Or does it mean the ability not merely to stand "alone," but to stand alone and still maintain a certain standard of government in both internal and external relationships? If we accept the former interpretation, we would seem to revert to the single criterion of force. In that case, no problem confronts us; for the pre-

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sumption would be that as long as a people did not throw off the yoke of external control, it was obviously lacking the force necessary to stand alone. If we accept the latter hypothesis, it is necessary to delimit the "standards" which must be maintained. The question does not seem to have been answered with regard to the mandates, nor has it been clearly defined in other cases of political domination.[1] If one accepts the preamble to the Jones Act[2] as a definition in the case of the Philippines, "readiness for independence" seems to mean the ability to maintain a "stable government." On the other hand, the interpretation of the executive branch of the government[3] would seem to imply that this stable government must be able to defend itself against aggression in an imperialistic world, must be based on democratic principles, and must respect its obligations under the present capitalistic system of the Western world. If we turn to India, there would seem to be an emphasis, not only on the ability "to stand alone," but to stand together; and the same thing may perhaps be said of China. One thing seems clear, namely, that before one can measure "readiness for independence," or "ability to stand alone," it is necessary to determine what these terms imply.

Even when this question of ultimates has been decided there will remain the problem of determining what factors constitute criteria of such capacity. What factors are to be measured in a given instance as indicative of the existence of this fundamental ability as defined? In the case of such dependencies as the Philippines[4] and India,[5] as in the case of the mandated areas, judgment seems to have been rendered and the verdict given that "they are not able to stand by themselves under the strenuous conditions of the modern world." But what are the standards by which these peoples have been adjudged unable to stand by themselves? By what criteria of a capacity for independence have they been measured and proved deficient? Right here lies the fundamental weakness of the mandatory system, just as it is the weak point in the relations between Great Britain and India, or the United States and the Philippines. There are no such standards; there is no yardstick for objective measurement; there is nothing to guarantee that the determination of eventual readi-

[1] Since writing the above, there has come to my attention a partial treatment of this question from the point of view of its bearing on the Chinese situation, namely, A. N. Holcombe, *The Chinese Revolution* (Cambridge, 1930), *passim* and especially pp. 32-45.

[2] Act of August 29, 1916. U. S. Compiled Statutes (1918), pp. 575-593.

[3] See President Coolidge's veto on April 6, 1927, of Philippine bill proposing referendum on question of independence; also, report of Carmi M. Thompson, Senate Doc. 180, 69th Congress, 2nd Session.

[4] *Ibid.*

[5] Report on Indian Constitutional Reforms (H.M. Stationery Office, London, 1918, Cd. 9109), pp. 277-278.

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ness for independence will be decided on any more objective evidence than was the determination of a present lack of it. Here is the source of much of the discontent and unrest which characterizes all such territories. It lies in the uncertainty as to the future, the oft-expressed conviction that, no matter how much progress may be made, the goal will never be achieved because, due to the lack of any defined standards, the requirement will purposely be raised whenever achievement is in sight. Whatever the justification or lack of it for such a conviction, there can be no doubt that the absence of clearly defined criteria of a capacity for independence is largely responsible for its existence. If it is possible to classify the mandates into A, B, and C mandates upon the basis of their relative fulfillment of the conditions necessary for a recognition of their independence, it should be possible to define those conditions in unmistakable terms so that any independent and impartial body could measure the achievements of a given people as against those criteria, and arrive at approximately the same result. If it is possible to deny that a people are "able to stand by themselves under the strenuous conditions of the modern world," it should also be possible to define clearly the degree of attainment which is necessary in order to evidence an ability to stand by themselves.

One has only to turn to the arguments, pro and con, with regard to the granting of independence to the Philippines to see what havoc is played by the lack of clearly defined standards. One man is concerned primarily with the disposition of our naval forces, the necessity for a naval base, the defense of Hawaii and the Pacific Coast. For him, the answer to these questions should determine the granting of independence to the Philippines. A second is concerned primarily with the effect of independence upon the sugar industry, a third with its effect upon missionary movements, a fourth with possible repercussions in the British and Dutch islands, and finally one, and probably the most influential one, is thinking merely in terms of its vote-getting possibilities with reference to coming elections. Although these arguments should perhaps have some weight in the final determination as to whether independence shall be granted, not a single one of them is any test of the ability of the Filipinos to "stand by themselves." They are standards by which to measure the effects of the granting of independence upon various problems, but they are not criteria of the capacity of the Filipinos for independent government. And yet they are so confused with the latter in most of the public discussion of this perplexing question that to the average person they mean one and the same thing. While most people would probably agree that readiness for independence should be given great weight in solving this problem, it is probably equally true that they assume such a readiness does not exist at present, an assumption based

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upon a process of subjective reasoning without objective study or evidence. Their attitude is, probably for the most part, a mere rationalization enabling them to justify a position which they wish to maintain for other reasons by an argument which appears more altruistic and which it is difficult to prove or disprove. The natural result of this situation is to encourage the belief that the United States is insincere in its promises of eventual independence; and as long as no common standards exist, it would seem to be the inevitable result.

If the determination of common criteria of the capacity for independence is desirable for the peaceful solution of imperial and colonial problems, it would seem to be even more necessary for the satisfactory working of the mandatory system if that system is to live up to its declared moral justification and its "sacred trust of civilization." As Professor Hocking has pointed out in a recent article[6], no provision has been made for the termination of the mandates, no criteria have been set up as to what shall constitute evidence of ability nor as to how or by whom this evidence is to be judged. The very fact that Iraq appears to be the first of the mandates to achieve its goal would seem to be only the more evidence that the deciding factors in determining when independence shall be granted have little to do with any objective evidence of capacity. Certainly this can only tend to discredit the system among those who can see no objective evidence of greater capacity for self-government in Iraq than in other Class A mandates[7]. The question may well be raised whether it is in harmony with the spirit of the mandatory system to leave the determination of the readiness of a given area for independence to the decision of the government to whom the mandate has been entrusted. If the system is to win the respect of the people who are governed under it, there is necessity to show that when independence does come it comes as a result of the actual attainment of definite objectives, and not merely because of the exigencies of the existing political situation. Is it not just as great a violation of the "sacred trust of civilization" for a mandatory power to shake off the burden of its trusteeship before real evidence of ability to stand alone has been shown as for it to maintain its position of control long after this ability is recognized? With the best of intentions, is it possible for the mandatory power to make such a momentous decision impartially and fairly, especially when there are no recognized standards to guide it? Would it not be a logical function for the Mandate Commission, which is ultimately responsible for the proper execution of this sacred trust, to determine the standards which should guide both mandatory and mandate in reaching their goal?

[6] "The Working of the Mandates," *Yale Review* (1930), XIX, p. 246.

[7] Cf. W. Martin, "L'Irak à Genève," *Journal de Genève,* Nov. 11, 1930; *La Syrie,* Nov. 19, 1930.

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This would not only facilitate the determination of a readiness for independence but, in the interim, would furnish a goal toward which the subject people might direct their efforts along the lines of a constructive program of development, rather than dissipate their energies in political propaganda and intrigue. Making that goal fixed and definite would go far toward doing away with the conviction that no amount of achievement will bring them any nearer to their goal.

Except for the recent efforts of the Permanent Mandates Commission, nothing seems to have been done toward the solution of this problem; and yet it would appear to be one which is not incapable of scientific treatment. Take, for example, its first aspect, i.e., the determination of the criteria of the capacity for independence or self-government. Such a list must be comprehensive. It must include all those factors which contribute toward making a people ready to conduct their own government without outside supervision or control. It must be not merely a partial selection of certain criteria which have perhaps played an important part in particular situations, but which make the ultimate test of capacity depend upon a few factors to the exclusion of all others. In the second place, these criteria must be in close relation with the realities of political life. They must not be a set of ideal standards applicable only in a utopian world, but must be such as will command general acceptance and approval as actually constituting a test of the ability to maintain a national existence under the conditions of the modern world. This is a research problem of the first magnitude. The student must go to the treaties and conference records of the past; he must delve deep into the archives of foreign and colonial offices; he must sit in on the secret conferences of cabinet ministers and statesmen; he must examine the petitions and protests of dependent peoples; he must wade through the hearings of the Mandate Commission; he must familiarize himself with the vast literature of the subject. Out of this mass of material will be drawn a long list of factors which have been advanced at one time or another as constituting evidence of a readiness for independent self-government in each of the situations analyzed. While it would be both impossible and unscientific to attempt to predict what such a list would contain, even a superficial study of the problem reveals some of the factors which would be found, such as potential military force, degree of united public opinion, standards of health and sanitation, standards of justice, degree of economic self-sufficiency, degree of administrative efficiency, degree of literacy, extent of intelligent leadership, standards of public order and security, standards of police administration, liability to external attack, economic necessities of controlling power, racial differences, relation to general problems of world peace, relation to other subject peoples, etc., etc.

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The next step is to analyze these alleged criteria for the purpose of eliminating the transient and irrelevant. Many of these items will be found to bear upon the wisdom of granting independence in a particular case, but are not criteria of the general problem of capacity. Such an objection as that the granting of independence to the Philippines would embarrass Great Britain and Holland in the control of their Pacific possessions, and perhaps thereby disturb the peace of the world, is one that may be given due weight in arriving at the final decision, but it certainly has nothing to do directly with the question as to whether the Filipinos themselves are capable of maintaining an independent government. Likewise, the necessity for an American naval base in the Pacific may be one of the factors to be considered, but is not a criterion of the capacity of the Filipinos. On the other hand, the fact that the American sugar industry might be benefited by the independent status of the Philippine Islands is no proof that the people of these islands are able to stand alone. The purpose in segregating these irrelevant factors is to draw a clear distinction between those factors which are related only to the general problem of the granting of independence and those which are related to the specific problem of the determination of a capacity for independence. Much confusion has resulted from the ease with which the arguments based upon alleged political and economic results of a change of status have been made to appear as determinants of capacity, and, because of the very lack of standards and techniques for objective measurement, the emphasis has been placed upon an assumed incapacity, since it constituted the most morally justifiable objection to the granting of independence. A clear distinction between the question of capacity and the other factors involved in the consideration of possible independence is certainly essential if the criteria of capacity are to be selected on any objective and scientific basis.

With the selection of the factors which directly relate to the question of capacity, the problem arises of separating the essential from the non-essential, and of attempting to reconcile the possibly divergent points of view of the ruling nations with those of their dependencies; for the success of this experiment will be determined in large measure by the degree to which the criteria are acceptable to both groups. Perhaps the first step will be to discover by a comparative study of the data what factors are common to the largest number of situations, and have been advanced by the largest number of interests involved as being relevant to the question of capacity. If there has been practical unanimity, as shown by the historical record, in holding certain factors to be of primary importance in determining a readiness for independent government, and particularly if this unanimity included both ruling and ruled, these factors can be set in a class by themselves. In such cases there can be

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little doubt that they constitute essential criteria of the capacity for independence under the practical conditions of political existence. While at first glance one might expect this to be an almost hopeless task, even a superficial study would seem to indicate that there is a larger field of agreement between ruler and ruled as to what constitutes a test of the capacity for self-government than most would probably anticipate. For example, to cite the obvious, there would seem to be no disagreement as to the necessity for a real public opinion within the territory in favor of independent status, though there may be no agreement as to whether it exists.

On the other hand, there is a strong difference of opinion as to the essential nature of some of these criteria. This disagreement exists not only as between the dominant and dependent groups, but even between statesmen and leading authorities within the groups themselves. Perhaps one of the best examples is the question as to the extent to which Western forms and standards of government are essential to admission to an independent national existence. Some writers would seem to uphold the idea that a people who are not ready to adopt some form of democratic government cannot be expected to stand alone. Even if democracy were conceived as an ideal form of government, it can scarcely be maintained that it is essential to national existence, or that it would be at all in harmony with the realities of international practice to make it a criterion of the capacity for such independent status[8]. Some would seem to go even farther and include certain Western, or even Christian, social and moral standards as indispensable. Such a position is certainly untenable unless the opposing standards are such as to be incompatible with the fulfillment of a nation's responsibilities under international law. Not only does it complicate the problem by the assumption of an inherent superiority of Western culture, but it is not even consistent with the facts of international relations in the past. Such problems need careful study in order to separate those factors which have been accepted as necessary qualifications for independence, as evidenced by historical precedents and practice, from those which attempt to set up ideal standards which have not been generally accepted, even by those nations at present constituting the community of nations[9].

But important as is the problem of the determination of the standards which must be met, its successful solution would promptly lead to a further difficulty which must be solved before these standards could be effectively applied. As previously indicated, there is extensive disagree-

[8] Cf. D. H. Miller, *The Drafting of the Covenant* (New York, 1928), pp. 164-167.

[9] Such problems as these are inseparably connected with the question, already discussed, of the determination of the ultimates to be accepted in our definition of ability.

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ment, not only as to the criteria to be set up, but also as to whether a given criterion, when accepted as such, is being fulfilled in a given situation. How is the evidence of achievement in terms of a given criterion to be measured? To what extent can such evidence be reduced to measurable units, or, failing a completely quantitative treatment, to what extent can the subjective element be eliminated so that disagreement as to the facts of a given situation will be reduced to a minimum? In the first place, there is need for a clarification of the issues involved. Just as it was necessary in determining the criteria of capacity to define capacity, so is it necessary to define more clearly each of the selected criteria. Then again, as other factors often confused with criteria of capacity had to be eliminated as irrelevant, so in the case of measuring particular situations in terms of the individual criteria it is necessary carefully to analyze the evidence which may be presented. Does it really bear upon the point at issue? Is it pertinent to the particular criterion under discussion? A further step would be to examine the method of securing and of weighing the evidence to see whether it could not be so improved as to reduce the element of subjective bias and make the final judgment as objective and impartial as possible.

With some of the criteria it may not be possible to go much farther than this toward scientific objectivity, but even in these cases there is room for considerable improvement. So far, such measurement has consisted largely of securing the opinions of those who are supposed to be in a position to know. At its best, with the most competent authorities, this is most subjective, and at its worst, it becomes mere rationalization and propaganda. What is needed is a thorough study of all the existing evidence with regard to each of the criteria adopted. Too frequently, such study as has been made has been an attempt to justify a conclusion already reached by the selection of only that portion of the evidence that would support the hypothesis adopted, or by confusing the issue by the introduction of irrelevant data. In many cases, entirely new techniques must be evolved by specialists approaching the problem as one for scientific research with the sole purpose of finding a measuring instrument of accuracy and objectivity, regardless of what such measurement may show.

Take an example which is frequently exploited by the imperialistic press as evidence of the need for foreign control, namely, native standards of justice. A few examples of corruption or undue influence are usually assumed to be conclusive. Two questions arise which could be determined objectively by a thorough study of the court records; first, the extent to whch there has been a perversion of justice in terms of the existing law of the land, and second, to what extent it has seemed a perversion because the existing legal system is different from that of the foreign critic. Likewise, when this has been determined it must

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be compared with the actual standards of justice existing in other countries, rather than with the ideal standards of an almost perfect system.

While much might be accomplished along the lines just indicated, it is proposed that the study be carried a step farther, with the ultimate goal of determining whether any of these criteria can be reduced to quantitative terms by the application of a thoroughly objective technique. What is needed is some form of measurement such that, whether it is applied by an agent of the governing power or by an aspiring nationalist within the area, it would give substantially the same result. In other words, each one of the criteria which may be selected as satisfactory tests of a capacity for independence must be subjected to intensive study for the purpose of evolving a technique for the quantitative measurement of the conditions entering into the satisfaction of a given criterion. Whether such scientific precision and objectivity can be secured in the measurement of all the criteria cannot be predicted, for it has never been attempted; but certainly some of them, perhaps many, can be measured with far greater accuracy and objectivity than is even pretended at the present time.

For example, from among the hypothetical criteria listed above, some would seem more capable of scientific measurement in quantitative terms than others, such as potential military force, standards of health and sanitation, literacy, and economic self-sufficiency. Should these be found to be real criteria of capacity, they would then be submitted to scientific investigation and experimentation in an attempt to evolve a technique of quantitative measurement for each criterion selected. Others, seemingly less capable of such treatment, might yield to a thorough study of the difficulties involved. For example, if we take the criterion of public opinion, there is found to exist great diversity of view as to whether or not the people of a given region really desire independence. Some seem to believe that it is only a minority of the Filipinos who desire it, while others, and seemingly equally competent authorities, are convinced that the mass of the people are united in such a desire. The same situation has existed with regard to India, Egypt, and other dependent territories. Even the use of the plebiscite has not satisfactorily solved this problem, for it usually fails to give expression to the various shades of opinion and may not be reliable if conducted under the control of either the dominant power or the nationalist group alone. It is quite within the realm of possibility, however, that such studies as those of Allport[10] and Thurston[11] on attitude testing, or similar studies when applied to this problem, may evolve a technique for securing a more

[10] "Measurement and Motivation of Atypical Opinion in a Certain Group," in this REVIEW, XIX, pp. 635-760 (Nov., 1925).

[11] "Measurement of Opinion," *Jour. Abnormal Psych.*, XXII, pp. 415-430 (Jan., 1928).

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accurate and reliable measurement of public opinion on this question. A further problem needs to be met in the application of such techniques to an illiterate population.[12]

Given such techniques, it should be possible to set up a yardstick, or measuring scale, for each of the criteria selected, and to measure the attainments of a given people thereon. The final problem remains of determining exactly what point on a given scale shall constitute the turning point between capacity and incapacity, and likewise the relative weight to be given to the various criteria. How much may deficiency on one scale be offset by a greater degree of achievement on another? At the present time, this would seem to be the most difficult phase of the problem to solve. But should the earlier parts of the study result in satisfactory criteria of capacity, and in objective methods of measurement, it is perhaps not too much to hope that these would also shed light upon the solution of the final difficulty. But even if this determination of the minimum qualifications necessary be left, for the present, to political negotiation, compromise, and agreement, certainly the clarification of the whole problem of capacity furnished by clearly defined standards and techniques of objective measurement would greatly facilitate the problem of ultimate agreement on the goal which must be reached.

It is the purpose of this article to propose the problem outlined herein as a research project, and to invite criticism and comment thereon. Fully appreciating the magnitude of the problem and the uncertain nature of the conclusions to be expected, the writer nevertheless believes that the task is well worth undertaking, and that whether the results are positive or negative a worth-while contribution will have been made. To what extent the study can be kept to objective technique cannot be predicted, though it is believed that this approach may be more applicable than has been commonly suspected. However, the fact—if it be one—that this problem is not susceptible of objective treatment is in itself something worth determining scientifically. Even though the study in its entirety should never be completed, it is believed that any definite conclusions on the first part of it, that is, the determination that there are or definitely are not common criteria of capacity, would in itself help in the solution of the many perplexing problems arising in this type of international relationships.

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[12] For an illuminating example of an attempt to meet this problem, see the report of the King-Crane Commission appointed by President Wilson to ascertain the wishes of the people of the Near East. *Editor and Publisher,* LV, No. 27, 2nd Section, Dec. 2, 1922.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

Persons who are interested in arranging for a state or regional conference of the type of those now being held under the auspices of the Committee on Policy of the American Political Science Association are invited to correspond with Professor Harold W. Dodds, of Princeton University, chairman of the subcommittee on political education. See p. 141 below.

Professor George H. Blakeslee, of Clark University, has been acting as special adviser to the State Department at Washington during the Manchurian crisis.

Professor George E. G. Catlin, who spends part of each year at Cornell University, stood unsuccessfully as a Labor candidate in the Brentford and Chiswick division of Middlesex at the British general election of last October.

Dr. Raymond L. Buell, research director of the Foreign Policy Association, conducted a graduate seminar on international relations at Princeton University during the first term of the current year, and during the spring will give a series of eighteen lectures in the same field at the New School for Social Research, New York City. During February, he is also giving a course of six lectures at Cornell University on the Caribbean policy of the United States.

Dean Frederick A. Middlebush, professor of political science and public law in the School of Business and Public Administration at the University of Missouri, is spending the second semester and summer at Geneva in research work in the field of international relations.

Professor Jesse S. Reeves, a former president of the American Political Science Association, has been named as the Henry Russell lecturer for 1932 at the University of Michigan. The executive council of the Research Club is authorized by the board of regents of the University to choose annually as lecturer "that member of the faculty whom the council deems to have attained the highest distinction in the field of scholarship."

Professor Irvin Stewart, chairman of the department of government in the American University Graduate School, served as technical adviser to the American delegations to the International Technical Consulting

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Committee on Radio Communication, Copenhagen, Denmark, in May-June, 1931, and the Pan-American Commercial Conference, Washington, in October, 1931.

Dr. Dana G. Munro, who has been in the Department of State and the Foreign Service since 1919, has accepted an appointment as professor of Latin American history and culture at Princeton University.

Professor Thomas S. Barclay, of Stanford University, has been appointed to a consulting fellowship at the Brookings Institution for the year 1932. During the summer of 1931, he was a member of the staff of the School of Citizenship and Public Affairs at Syracuse University, giving courses on political parties and legislation.

Professor Peter Odegard, of Ohio State University, will spend the coming spring and summer in Germany. Dr. Harvey Walker, of the same institution, has been advanced to an associate professorship.

Sir Sidney Low, author of *The Governance of England* and other books known to political scientists, died at London on January 13 at the age of seventy-four.

Professor Pitman B. Potter, of the University of Wisconsin, will give courses in the coming summer session of Harvard University. He participated on January 5 in an institute of international affairs held at Tulane University, New Orleans.

After an extended leave of absence in Sweden for the purpose of making a study of the Bratt liquor control plan and giving lectures at the Universities of Upsala and Kongelige Frederiks, at Oslo, Norway, under the auspices of the Carnegie Endowment for International Peace, Professor Walter Thompson is again in residence at Stanford University.

Professor James K. Pollock, of the University of Michigan, will spend the spring and summer in Europe in observation and study of party affairs preparatory to the writing of a book on comparative party politics.

Professor Amos S. Hershey, who has been in ill health for a number of years, has so far recovered as to be able to conduct one course on international affairs at Indiana University.

Mr. Floyd E. McCaffree, of the department of political science at the University of Michigan, has prepared a convenient chronological chart

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of the personnel of the Supreme Court of the United States, and is prepared to supply copies to anyone desiring them at seven cents each or $3.50 for fifty.

Professor Walter R. Sharp, on leave of absence from the University of Wisconsin while serving as fellowship and grant-in-aid secretary to the Social Science Research Council, will give a course in the Columbia University summer session on civil service problems and another on representative government in contemporary Europe.

Dr. Norman W. Beck, formerly instructor in government at the University of Chicago, holds an instructorship at Yale University during the current year.

Dr. Frederic W. Heimberger, who received his doctorate at Ohio State University last June, has accepted a position in the Indiana State Teachers College at Muncie.

Professor Hugh McD. Clokie, of Rutgers University, is acting assistant professor of political science at Stanford University during the current year.

Mr. William H. Edwards, formerly instructor in political science at the University of North Dakota, and later at Sweetbriar College, has been appointed to a position in the Wisconsin State Teachers College at River Falls.

Under the auspices of the Division of Humanities, Dr. Charles A. Beard is delivering a series of eleven lectures on Representative Government in a Technological Age at the California Institute of Technology, and Dr. Jacob Gould Schurman a series of four on Problems of International Relations.

Dr. C. A. Dykstra, city manager of Cincinnati, addressed the annual meeting of the Ohio Municipal League at Columbus on November 28. His subject was "Municipal Responsibility for Unemployment Relief." At a meeting of the newly elected executive committee of the League, following this meeting, Professor Harvey Walker, of the department of political science at Ohio State University, was reëlected secretary-treasurer.

Dr. Carl E. McCombs, of the Institute of Public Administration, is assisting the Rochester Bureau of Municipal Research in the preparation of a comprehensive report on the hospital problems of the city. Mr.

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A. E. Buck, also of the Institute, is acting as advisor to Governor William T. Gardiner on the installation of a complete fiscal system for the state of Maine as provided for in an act approved by a referendum on November 9.

Professor W. W. Willoughby, of the Johns Hopkins University, acted as counselor to the Chinese delegation at the 1931 meeting of the League of Nations Assembly. He remained to act in the same capacity at the meetings of the Council which considered the Manchurian crisis. During his absence the affairs of the department were in charge of Associate Professor James Hart. During February and March, Professor Frederic A. Ogg, of the University of Wisconsin, is lecturing to graduate students at Johns Hopkins on problems in the field of comparative government.

Five of the Cowles fellows in government at Yale University last year have entered upon career positions. Mr. C. Edwin Davis, who had formerly taught at the University of Texas, accepted an instructorship at Yale and is conducting courses in American government in the Sheffield Scientific School. Mr. Roy I. Kimmel, who served as a member of the Connecticut house of representatives while proceeding with his graduate work in legislation, began teaching government at Princeton University in September, being assigned to the new School of Public and International Affairs. Mr. Philip S. Broughton, who had taught at the College of the Pacific for two years prior to his Cowles fellowship, has been appointed instructor in government at Dartmouth College. Mr. Eric A. Beecroft, who had taught two years at Hamline University, is instructor in government at the University of California at Los Angeles. Mr. Harold C. Atkiss has accepted an appointment in government at the Brookings Institution in Washington.

Mr. Bruce Smith, of the Institute of Public Administration, has been appointed adviser to the mayor and the police commissioner of Chicago. Mr. Smith has undertaken this work as a representative of the Institute, and will devote about half of his time to it during the coming year. The mayor's advisory committee and the police commissioner have also asked Mr. Smith to direct the installation of the recommendations which he made last year for the improvement of the Chicago police department. These recommendations were the result of a survey conducted by Mr. Smith and staff for the Citizens' Police Committee, a representative group of business men and professors, organized to make suggestions for the betterment of the department. The original survey staff has been reassembled, and it is expected that the first major recommendation to be carried into effect will be one calling for a complete structural reorganization of the department. The work will probably proceed for the greater part of the coming year.

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On February 5 and 6, the second annual session of the Central Ohio Institute of Politics was held at Ohio State University in conjunction with a Y.M.C.A. conference on disarmament. Aside from disarmament, topics discussed included the Philippines, Japanese foreign policies, Russia, and Franco-German relations.

On November 16, a conference on the place of civics in the high school curriculum was held at Columbus, Ohio, under the auspices of the subcommittee on political education of the Committee on Policy of the American Political Science Association. The group which gathered included representatives of the Ohio state department of education, superintendents of schools, and a number of professors of political science in Ohio colleges and universities. Papers were presented by the following political scientists: O. Garfield Jones, University of Toledo; Karl F. Geiser, Oberlin College; Walter J. Shepard, Ohio State University; and Howard White, Miami University. Professor B. A. Arneson, of Ohio Wesleyan University, had charge of arrangements for Professor Earl W. Crecraft, of the University of Akron, who is the member of the Committee on Policy in charge of such meetings in several states.

The Harris Foundation at the University of Chicago held its annual institute from January 27 to January 31, instead of scheduling it for the summer quarter as heretofore. The general subject of discussion was "Gold and its Relation to International Affairs."

The fifth congress of the International Union of Local Authorities will be held in London, May 23-30. Dr. Luther Gulick, 261 Broadway, New York City, is acting as the American representative, and inquiries may be directed to him.

A three-day conference on Far Eastern affairs will be held at the American University, Washington, D.C., during the last week of March. Among those who will contribute papers are Professor W. W. Willoughby of Johns Hopkins University, Dr. Harold G. Moulton of the Brookings Institution, and Professor Frederic A. Ogg of the University of Wisconsin, who is conducting graduate seminars at the University during the current semester.

The first Institute of European Affairs, established by Mr. Chester D. Pugsley, was held at the College of William and Mary on October 14-15. Papers were read by distinguished representatives of the press and the foreign service on topics relating to current foreign affairs. An open forum followed each address. The Institute was a success in respect both to attendance and to the discussion stimulated by the principal papers.

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In pursuance of the policy of expansion laid down three years ago by the department of economics and political science at the Michigan College of Mining and Technology, a course in American government and politics will be introduced this spring by Professors C. H. Baxter and E. L. Wood. This action anticipates the operation of a recent Michigan statute requiring that all students graduated after June, 1933, from colleges supported in whole or in part by state funds shall have received a course in federal, state, county, and municipal government.

The Michigan State Commission of Inquiry into County, Township, and School District Government has arranged with Mr. Lent D. Upson, director of the Detroit Bureau of Governmental Research, to be in charge of the forthcoming study. A report must be submitted to the state legislature at its session beginning in January, 1933. The University of Michigan and Michigan State College are joining with the Detroit Bureau of Governmental Research in supplementing the appropriation for the survey made by the state legislature. Professors Thomas H. Reed, E. R. Sunderland, and John Sundwall, of the University of Michigan, and Professors P. A. Herbert and F. M. Thrun, of Michigan State College, are associated with the director as an advisory committee.

The American Municipal Association has established a permanent secretariat in charge of Mr. Paul V. Betters, formerly of the Brookings Institution, and located at 850 East 58th Street, Chicago. The Association is the national organization of state leagues of municipalities. Its purpose in establishing a permanent staff is to secure a more rapid interchange of information among the several state leagues of municipalities and to consolidate, so far as possible, certain major projects in research that may be undertaken more advantageously on a national than merely a state basis.

Announcement of the formation of the United States Society, an organization designed to provide high school and college students with current governmental information free of charge, was made by David Lawrence at the annual meeting of the American Political Science Association. Mr. Lawrence has accepted the chairmanship of the new organization, whose board of advisers consists of Calvin Coolidge, Elihu Root, Newton D. Baker, Owen D. Young, and John Grier Hibben. The work of the Society is to be financed through membership dues from public-spirited citizens in every state. State chairmen are now being appointed. At the present time, the organization is publishing a weekly magazine for high school students, a high school teachers' service to accompany this magazine, and a monthly debate service. It plans to begin the publication of a weekly paper for college students at the opening of the

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next academic year. The Society also plans to sponsor the organization of model congresses in the high schools and round table conferences in the colleges and universities. In both instances, the Society will endeavor to encourage the discussion of current governmental problems. The Society's publications will not carry editorials, and the founders of the new organization aim to have all subjects treated in a non-partisan, impartial manner.

The Committee of the American Political Science Association on Basic Data and Statistics will be glad to receive suggestions for the improvement of existing summaries of political and governmental data. The prosecution of nearly every type of research leads the investigator to discover inadequacies in the categories used by official and private publications. It is the desire of the committee to serve as a clearing house for the proposals advanced by research workers and to consider the advisability of recommending some form of action which will carry these proposals into effect. It is believed that this may be established as one of the service functions of the Association. Communications may be addressed to the chairman or to any other member of the committee, i.e., Luther Gulick, National Institute of Public Administration; James Hart, Johns Hopkins University; Harold D. Lasswell, chairman, University of Chicago.

Twenty-Seventh Annual Meeting of the American Political Science Association. The records show that the annual meeting held at the Mayflower Hotel, Washington, D.C., on December 28-30, 1931, was the most largely attended, and practically all persons present agreed that it was in other respects one of the most successful, in the history of the Association. The registered attendance was 353, as compared with 317 at Cleveland in 1930, 127 at New Orleans in 1929, 235 at Chicago in 1928, and 292 in Washington in 1927. Most of the sessions took the form of round-table or section meetings, and the number and range of topics discussed strikingly evidenced the notable expansion and enrichment which political science as a discipline has experienced in recent years. A high point in the sessions was the report of the Committee on Policy, presented first to the Executive Council and afterwards to the business meeting of the Association by the chairman, Professor Thomas H. Reed, and printed (with additions showing various actions taken) on pp. 136-149 below.

The program, in full, was as follows:

MONDAY, DECEMBER 28

10:00 A.M.

Round-Table Meetings.

1. *Comparative Central Government—Economic Planning as a State Activity.*

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PAPERS: "Economic Planning in Russia," George S. Counts, Columbia University.

"Economic Planning in Germany," Miriam E. Oatman, Brookings Institution.

"Economic Planning in Roumania," Joseph S. Roucek, Centenary Junior College.

DISCUSSION: Bruce Hopper, Harvard University; George Kalusek, correspondent of the *Narodni Politika*, Prague; Lee S. Greene, University of Wisconsin; Leopold Sauer, Social Science Research Council Fellow.

2. *Government and Education—Training Teachers of Government for the Public Schools.*

PAPERS: Charles H. Judd, University of Chicago; George S. Counts, Columbia University.

DISCUSSION: William Anderson, University of Minnesota; Frank Bates, University of Indiana.

3. *International Relations and Colonial Government—Problems of Colonial Administration and Legislation.*

PAPER: Charles T. Loram, Yale University.

DISCUSSION: Rupert Emerson, Harvard University; H. D. Gideonse, University of Chicago; Amry Vandenbosch, University of Kentucky; Lennox Mills, University of Minnesota.

4. *Judicial Administration—Administration of Federal Courts.*

DISCUSSION: Robert E. Cushman, Cornell University.

5. *Local Government—Administrative Relations between the Cities and States.*

PAPERS: "The Point of View of the City," C. A. Dykstra, city manager of Cincinnati.

"The Point of View of the State," John F. Sly, West Virginia University.

"European Experience," Roy V. Peel, New York University.

DISCUSSION: H. L. Lutz; Schuyler Wallace; Morris Lambie; T. H. Reed.

6. *Political Parties—The Use of Money in Elections.*

PAPER: "Voting Behavior as Related to Party Preference," Flora May Fearing, Northwestern University.

DISCUSSION: Harold F. Gosnell, University of Chicago.

12:30 P.M.

Subscription Luncheon.

Political Aspects of the New South.

CHAIRMAN: C. A. Dykstra, city manager of Cincinnati.

PAPERS: "The Changing Background of Southern Politics," H. C. Nixon, Tulane University.

"Problems of Current Southern Politics," John W. Manning, University of Kentucky.

3:00 P.M.

Section Meetings.

1. *Legislation—Research in Legislative Processes.*

INTRODUCTORY STATEMENT: John A. Lapp, Marquette University.

PAPERS: "Research Work of the American Legislators' Association," Rodney L. Mott, University of Chicago.

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"The Legislative Interim Committee as a Legislative Research Agency," Martha Ziegler, Northwestern University.

"Power to Get the Facts," Charles W. Shull, College of the City of Detroit.

2. *Public Opinion—A Reëxamination of the Public Opinion Concept.*

PAPERS: "Language and the Newspaper," Kimball Young, University of Wisconsin.

"Quantitative Newspaper Analysis as a Technique of Opinion Research," Julian L. Woodward, Cornell University.

"Study of Interest Groups and Public Opinion," A. Gordon Dewey, Union College.

"Public Opinion and the Attribute Cluster-Bloc Technique," Herman C. Beyle, Syracuse University.

"Finding the Public," Peter Odegard, Ohio State University.

DISCUSSION: W. Y. Elliott, Harvard University.

3. *Political Theory—The Place of Self-Regulating Economic Groups under a Democratic Government.*

PAPERS: Dexter M. Keezer, the Baltimore *Sun;* John Dickinson, University of Pennsylvania Law School; Francis W. Coker, Yale University.

8:00 P.M.

General Session.

CHAIRMAN: B. F. Shambaugh, University of Iowa.

PRESIDENTIAL ADDRESS: "Social Planning Under the Constitution," Edward S. Corwin, Princeton University.

TUESDAY, DECEMBER 29

10:00 A.M.

Round-Table Meetings.

1. *Comparative Central Government—Economic Planning as a State Activity.*

PAPERS: "National Economic Planning in France," André Bernard, Legislative Reference Service.

"Attempts at Centralized Planning in the United States," George B. Galloway, Editorial Research Reports.

"Some Social and Political Problems of Economic Planning," L. L. Lorwin, Brookings Institution.

DISCUSSION.

2. *Government and Education—Methods of Teaching Government in the Schools.*

PAPERS: J. B. Edmondson, University of Michigan; J. A. Engleman, Kent State College, Ohio.

DISCUSSION: Ben Arneson, Ohio Wesleyan University; George J. Jones, Central High School, Washington, D.C.; Karl F. Geiser, Oberlin College.

3. *International Relations and Colonial Government—International Political Effects of High Tariff.*

PAPER: Philip G. Wright, Brookings Institution.

DISCUSSION: Lynn R. Edminster, U. S. Department of Agriculture; H. B. Elliston, *Christian Science Monitor;* David Mitrany, Harvard University.

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4. *Judicial Administration—Research in Judicial Administration.*
   CHAIRMAN: Raymond Moley, Columbia University.
   PAPERS: J. A. C. Grant, University of California at Los Angeles, and Rodney L. Mott, University of Chicago.
5. *Local Government—The Reorganization of Rural Areas.*
   PAPERS: "Rural Areas," Theodore B. Manny, U. S. Department of Agriculture.
   "Administrative Difficulties in Connection with Functions in Onondaga County, New York," Robert F. Steadman, Syracuse University.
   "The Sociological Implications of Rural Local Government," John H. Kolb, University of Wisconsin.
   DISCUSSION: Wylie Kilpatrick, Trenton, New Jersey.
6. *Political Parties—The Use of Money in Elections.*
   PAPERS: "Election Administration in its Relation to the Cost of Campaigning," Joseph P. Harris, University of Washington.
   "Some Suggestions from British Practice for Regulating Election Expenditures," James K. Pollock, University of Michigan.
   DISCUSSION: Ralph S. Boots, University of Pittsburgh; Carroll H. Wooddy, University of Chicago.
7. *Political Aspects of the New South—The Background of Southern Politics.*
   DISCUSSION: Robert S. Rankin, president of the Southern Political Science Association, Duke University.

12:30 P.M.

Subscription Luncheon.
CHAIRMAN: Edward S. Corwin, Princeton University.
ADDRESS: "Bringing the Government and the People Closer Together," David Lawrence, editor of the *United States Daily.*
Report of the Committee on Policy, Thomas H. Reed, University of Michigan, chairman.

2:30 P.M.

Joint Meeting with the American Economic Association.
Investments and National Policy of the United States in Latin America.

4:00 P.M.

Annual Business Meeting.

WEDNESDAY, DECEMBER 30

10:00 A.M.

Round-Table Meetings.

1. *Political Parties—The Use of Money in Elections.*
   PAPERS: "A Program for Public Regulation of Campaign Funds," Senator Bronson Cutting of New Mexico.
   "The Kohler Case as an Illustration of Enforcement Difficulties," J. A. Clifford Grant, University of California at Los Angeles.
   DISCUSSION: Senator Gerald Nye of North Dakota; Representative Robert Luce of Massachusetts.
2. *Government and Education—The Place of Government in the Public School Curriculum.*
   PAPERS: F. J. Kelley, Office of Education, United States Department of the Interior; S. E. Ellett, Grand Rapids High School, Michigan.

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DISCUSSION: J. P. Senning, University of Nebraska; John Lapp, Marquette University; Earl W. Crecraft, University of Akron.

3. **Joint Meeting with the American Statistical Association.**

Political Science and Statistics.

12:30 P.M.

Subscription Luncheon.

CHAIRMAN: Miss Belle Sherwin, president of the National League of Women Voters.

ADDRESSES: "The Irish Free State," Hon. Michael MacWhite, minister of the Irish Free State to the United States.

"China Today," Hon. W. W. Yen, minister of the Chinese Republic to the United States.

2:30 P.M.

Section Meetings.

1. *Public Administration—The Findings of the Minnesota Conference on University Training for the Federal Service.*

Presentation of the proceedings of the Conference by William Anderson and Morris B. Lambie, University of Minnesota.

Discussion of "Next Steps," L. J. O'Rourke, director of research of the United States Civil Service Commission.

DISCUSSION: Leonard White, University of Chicago and the Chicago Civil Service Commission; Harvey Walker, Ohio State University; Secretary of the Interior R. L. Wilbur; President T. E. Campbell of the United States Civil Service Commission; W. H. McReynolds, director of the Federal Personnel Classification Board.

2. **Joint Meeting of the Section on Public Law with the American Association for Labor Legislation.**

Effects of Administrative Law on Theory and Practice.

3. *The Teaching of Government—The Teaching of the General Course in Political Science.*

PAPERS: "Government '21' at Columbia," Schuyler C. Wallace and A. Gordon Dewey, Union College.

"Government '1' at Harvard," George C. S. Benson.

"Political Science '1-2' at Michigan," James K. Pollock.

"Political Science '1-2' at Minnesota," William Anderson and O. P. Field.

"Political Science '104' at Wellesley" Louise Overacker.

"Political Science '1-2' at Williams," Donald C. Blaisdell.

"Political Science '1' at Wisconsin," John D. Lewis.

DISCUSSION.

The Secretary-Treasurer reported a total membership of 1,894, composed as follows: life members, 46; annual, sustaining, and associate members, 1,848. Of the last number, about 600 are libraries. A total of 226 new members were reported for the year 1931, the largest number ever acquired in a single year.

The following balance sheet, operating account, and trust fund account for the fiscal year ending December were presented by the Secretary-Treasurer:

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COMPARATIVE BALANCE SHEETS
as of
December 15, 1930-December 15, 1931

Assets			*1931 in Comparison with 1930*
Cash			
In Bank—Checking Account	$ 601.60	$ 524.02	$ —77.58
In Bank—Trust Fund	805.46	910.64	+105.18
Petty Cash	4.71	.36	—4.35
Investments			
U. S. Treasury Bonds	1,535.29	1,535.29	
	$2,947.06	$2,970.31	$ +23.25
Liabilities	None	None	
Cash Net Worth of the Association	$2,947.06	$2,970.31	$ +23.25

Trust Fund

Cash on deposit December 15, 1930		$ 805.46
Interest Received:		
U. S. Securities	$ 101.27	
Bank Balances	3.91	105.18
Cash on deposit December 15, 1930		$ 910.64

Comparative Statement of Income and Expenses for the Fiscal Years Which Ended December 15, 1930 and 1931 (and Estimates of Income and Expenses for the Fiscal Year Which Will End December 15, 1932).

Income	*Year Ended Dec. 15, 1930*		*Year Ended Dec. 15, 1931*		*Estimates for the Year to end Dec. 15, 1932*	
Current dues collected from old members	$6,068.59	$	$5,939.50	$	$6,000.00	$
Current dues collected from new members	403.75		950.17		800.00	
Prepaid dues collected	810.50		902.75		850.00	
Delinquent dues collected	220.75		230.00		250.00	
Total dues		7,503.59		8,022.42		7,900.00
Special contributions		135.00		112.50		125.00
Sale of publications	245.09		157.75		195.00	
Sale of indices	8.00		12.00		10.00	
Sale of mailing lists	48.00		75.00		50.00	
Sale of special reprints	64.04		31.89		60.00	
Total sales		365.13		276.64		315.00
Advertising		429.47		544.73		500.00
Royalties		2.05		1.45		1.00
Interest		67.28		105.18		109.00
		$8,500.47		$9,062.92		$8,950.00

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Expenses	*Year Ended Dec. 15, 1930*		*Year Ended Dec. 15, 1931*		*Estimates for the Year to end Dec. 15, 1932*	
Review costs						
Printing	$5,162.55	$	$5,281.31	$	$5,200.00	$
Reprints	372.83		300.03		300.00	
Managing Editor—						
Salary	600.00		600.00		600.00	
Travel	125.88		50.55		80.00	
Miscellaneous	692.00		703.00		650.00	
Contributors	388.34	7,341.60	358.50	7,293.39	370.00	7,200.00
Secretary-Treasurer						
Clerical and stenographic	900.00		900.00		900.00	
Stationery and postage	258.56		230.55		230.00	
Travel	284.91		82.33		100.00	
Auditing	39.50		43.32		50.00	
Miscellaneous	138.08	1,621.05	122.55	1,378.75	75.00	1,355.00
American Council of Learned Societies		45.00		45.00		45.00
Annual meeting		194.35		138.60		170.00
Miscellaneous		343.52		183.93		180.00
		$9,545.52		$9,039.67		$8,950.00
Deficit for the year		1,045.05		None		None
Surplus for the year		None		23.25		None

At the annual business meeting, the following officers of the Association were elected for the year 1932: president, W. F. Willoughby, Brookings Institution, Washington, D.C.; first vice-president, Leonard D. White, University of Chicago; second vice-president, Ellen D. Ellis, Mt. Holyoke College; third vice-president, P. Orman Ray, University of California; secretary-treasurer, Clyde L. King, University of Pennsylvania; members of the Executive Council for the term ending December 31, 1934: Thomas S. Barclay, Stanford University; James Hart, Johns Hopkins University; Morris B. Lambie, University of Minnesota; Kirk H. Porter, University of Iowa; and Frank M. Stewart, University of Texas.

Final action was taken on the proposal to convert the REVIEW into a bi-monthly, and the new schedule goes into effect with the current issue. On recommendation of the Managing Editor, a plan was adopted under which, beginning in 1932, members of the Board of Editors will be elected for two-year terms, one-half retiring at the close of each year. With a view to putting the system into operation, five present members of longest service—C. A. Berdahl, R. E. Cushman, A. C. Hanford, T. H.

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Reed, and C. L. King—were reëlected for one year, and five of shorter service—W. F. Dodd, A. W. Macmahon, C. W. Pipkin, R. M. Story, and L. D. White—for two years.

At the close of the meeting it was announced that the chairman of the committee on program for the 1932 meeting will be Morris B. Lambie, of the University of Minnesota. Round-tables were asked, as a year ago, to designate representatives to coöperate with the committee in planning the program.

Some discussion in the Executive Council of the place of meeting in 1932 brought out support chiefly for Detroit, Cincinnati, and Columbus. Decision, however, remains to be made by the Council, and will be announced in an early issue of the REVIEW. There is a possibility that a special meeting will be arranged for the summer of 1933 in connection with a proposed international congress of the social sciences to be held at Chicago during the Century of Progress Exposition.

CLYDE L. KING, *Secretary-Treasurer.*

Report of the General Chairman of the Committee on Policy for the Year 1931. The Standing Committee on Policy was organized in accordance with a resolution adopted by the Association at its annual business meeting on December 30, 1930. In addition to the General Chairman, its membership for the past year has been as follows:

Appointed members

Subcommittee on Research	Subcommittee on Publications
W. F. Willoughby	B. F. Shambaugh
Charles A. Beard	Arthur N. Holcombe
Charles E. Merriam	Isidor Loeb
Subcommittee on Personnel	**Subcommittee on Political Education**
William Anderson	Harold W. Dodds
Luther Gulick	William B. Munro
Harvey Walker	Earl W. Crecraft

Ex-officio members

President Edward S. Corwin (Subcommittee on Research)
Secretary Clyde L. King (subcommittee on Research)
Editor Frederic A. Ogg (Subcommittee on Publications)

The terms of Charles E. Merriam, Harvey Walker, Isidor Loeb, and Earl W. Crecraft expired with the annual meeting of 1931. Incoming President W. F. Willoughby designated Edward S. Corwin to fill out the remainder of the former's appointive term, reappointed Charles E.

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Merriam and Earl W. Crecraft for terms of three years, and appointed John M. Gaus and Walter J. Shepard for terms of similar length.

The whole Committee has held three meetings: February 13 and 14 at Princeton, June 29 at Charlottesville, Virginia, and December 27 at Washington. On each occasion a quorum of the Committee was present and transacted important business. The minutes of these meetings have been mimeographed and are available for distribution. It is through the subcommittees, however, that the greater part of the work of the year has been done, and the achievements of the Committee on Policy will best be seen in a brief review of their activities.

The Subcommittee on Research set for itself the following objectives: "(1) securing information regarding the direction which research in the field of political science could most profitably take, and (2) the preparation of aids for students, particularly younger students, in undertaking and prosecuting research in political science." The first result was to be approached by securing the opinion of a number of leading students of political science in the United States and of not to exceed ten foreign scholars; each of the latter was to receive an honorarium of one hundred dollars for his contribution. In partial fulfillment of its second aim, the subcommittee proposed to compile (1) a selected bibliography of political science; (2) a handbook for political science research workers, containing a list of all agencies engaged in political science research, with their publications, methods of work, and funds available for fellowships or grants to political science students.

For the above purposes, the Committee on Policy allowed a budget of $3,500. The subcommittee called on a considerable group of American scholars for their views as to the most desirable fields of research in political science. The response was far from satisfactory. Many ignored the request altogether, and many others satisfied themselves with a simple acknowledgment of its receipt. No attempt was made to gather the opinions of foreign scholars. Considerable progress, under Dr. Willoughby's immediate direction, has been made in the preparation of the "Handbook." The project for a selected bibliography has been for the time being set aside, and the Handbook project has been extended to include a complete bibliography of the publications of all agencies engaged in research, cross-indexed by localities and topics. Dr. Willoughby estimates that the Handbook will be well advanced toward completion by the end of next year.

The Subcommittee on Personnel early added to its number E. A. Cottrell, and has recently added John A. Fairlie also. It was assigned by the Committee on Policy the sum of $1,775 as its allowance for the year 1931. It has carried on a placement service primarily for college

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and university teachers. Altogether, sixteen persons with doctor's degrees and fifty-four with less preparation (about half of whom expected to take the doctor's degree within the year) registered with the service. Lists of registrants, with their records, were sent to numerous institutions. No information is available as to the number of persons obtaining positions as a result of this procedure. This is in part due to the fact that the subcommittee encourages direct communication between the registrants and institutions. The number, however, was undoubtedly small, though this fact may be ascribed to the new and untried character of the service and the unusual difficulty of finding positions at all in this year of depression. The subcommittee considers that the service has a valuable by-product in calling the attention of appointing authorities to the existence and work of the Political Science Association and to the desirability of filling positions in the social science field with persons trained in political science. It recommends the continuance of the experiment for another year.

The Subcommittee on Personnel has also prepared a list of fellowships, scholarships, assistantships, and grants-in-aid in this country and abroad open to graduate students in political science. Copies are now available in mimeographed form. The subcommittee has begun an analysis of courses now offered in political science, the types of positions available for teachers of political science, and the training and qualifications of the persons at present holding these positions. This work will be continued during another year.

The subcommittee has also recommended a project prepared in detail by Dr. Luther Gulick for a comprehensive survey of training for the public service. No more timely and significant subject of research could be suggested to the Association. The future of our profession, and of our country itself, depends on the development of an intelligent corps of public servants trained not only in the specific tasks committed to them but in the general field of politics and administration. It is only from men so trained that we can expect true executive leadership. Without them, the classified civil service is condemned to remain the grave of mediocrity and to be ignored in the selection of the higher personnel. This project of the subcommittee was approved by the Committee on Policy, the Executive Council, and the Association at the 1931 meeting, and the subcommittee has been authorized to raise, with the assistance of the General Chairman, a budget of $169,000 for a period of three years and to initiate the survey.

The Subcommittee on Personnel held two meetings: February 13 and 14 at Princeton, and November 9 at Buffalo. It expended, in all, $1,004.90. It has in mind a number of other projects of more or less importance,

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such as: (a) the holding of further conferences on training for the public service; (b) the study of the vocational opportunities for men trained in political science in governmental research work; (c) the maintenance of fairly continuous contacts with civil service commissions, so as to be ready to grasp opportunities for increasing the openings for political scientists in government service; (d) the analysis of the vocational interests, aptitudes, and abilities which we should look for in college undergraduates before encouraging them to go on into graduate work in political science; and many others.

The Subcommittee on Publications has made two considerable contributions to the progress of the Association. It recommended (and the full Committee on Policy and the Executive Council at the Virginia meeting in June, and also the 1931 meeting of the Association, ratified the proposal) to convert the AMERICAN POLITICAL SCIENCE REVIEW into a bimonthly. To make this possible without too great a burden upon the Managing Editor, the Committee on Policy agreed to appropriate six hundred dollars annually from its funds to supplement the usual appropriations of the Association. The REVIEW therefore becomes a bimonthly with the February, 1932, issue.

The second achievement of the Subcommittee on Publications was to dispel the doubts which have hitherto obscured all our debates over programs of publication. There has long been talk of Association aid in the publication of (1) worthy studies which commercial publishers refuse—a monograph series; (2) a series of documents, domestic and foreign; (3) a series of political science classics, many of which are unavailable in good English editions. The subcommittee asked the opinion of the members of the Association on the usefulness of each of these series. The returns showed in each case heavy favorable majorities. Out of 359 votes, there were on the monograph series 73 per cent yes, 5 per cent qualified yes, 10 per cent no, 3 per cent qualified no, and 9 per cent doubtful; on the documents series, 79 per cent yes, 5 per cent qualified yes, 5 per cent no, 2 per cent qualified no, and 9 per cent doubtful; and on the classics series, 62 per cent yes, 7 per cent qualified yes, 20 per cent no, 4 per cent qualified no, and 7 per cent doubtful. But the subcommittee did what the mere quantitative researcher never would have done—it published in a large mimeographed volume a digest of the reasons by which those replying explained their votes. When the Committee on Policy met at Charlottesville last June and the findings of the subcommittee were presented, member after member said, "I voted 'yes' on all three projects, but after reading the reasons adduced on both sides I have changed my mind." So a resolution presented by the subcommittee for the appointment of a committee to undertake publication of a mono-

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graph series was, with the subcommittee's acquiescence, referred back to it; and the Council and Association have acquiesced in this action with apparent unanimity. This leaves the way clear for the unhindered consideration of the problem of periodical publication. The enlargement and improvement of the REVIEW, the use of supplements for the publication of useful documents or long articles, the question of a journal of public administration, the possibility of a periodical suited to the needs of teachers of government in the secondary and elementary schools —these matters the subcommittee is considering. At the same time, it is nursing the suggestion of a full-time editor-secretary housed in a building in New York or Washington along with the secretariats of other social science associations. This subcommittee spent but $272.87 out of an appropriation of $750.

The Subcommittee on Political Education has divided its work into several independent, though parallel, efforts.

1. *Citizenship Training.* Under the direction of E. W. Crecraft, the subcommittee, with the addition of Edgar Dawson and John P. Senning, has undertaken to advance the place occupied by government among the social studies now taught in secondary and elementary schools. It has sought contacts with teachers' colleges and normal schools, in which the bulk of our teachers are trained, and has established coöperative relations with important educational groups interested in the social sciences.

In the furtherance of the first of these purposes, it has caused to be held a series of conferences at which educators, secondary and elementary teachers of the social sciences, and college and university teachers of political science have appeared together on the same programs to discuss the place of government in the public schools. The first of these conferences, attended by about a hundred persons, was held at Indianapolis in October in connection with the meeting of the social science section of the State Teachers' Association. Frank Bates, of Indiana University, presided, and the meeting resulted in the formation of a permanent committee whose main objectives are: (1) better preparation by colleges of education and normal schools of those who are to teach civics and government in our schools, and (2) better understanding of the fact that civics, whatever it may include, must emphasize mainly government—its forms, functions, policies, activities—and the relation of the individual citizen to the state or body politic. The second conference, organized by B. A. Arneson of Ohio Wesleyan University, was held at Columbus, Ohio, on November 16. The fifty persons present included educators, educational administrators, and political scientists. The third conference was held at the State Teachers College at Upper Montclair, New Jersey, on No-

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vember 21. About a hundred persons were present. President H. A. Sprague of the State Teachers College presided. The program included addresses by Professors Crecraft, Dawson, Barnard, and others. State and local educational authorities participated in the discussion.

The subcommittee also planned for the 1931 meeting of the Association a three-day round table on Government and Education. On the program were educational authorities like Charles H. Judd, George S. Counts, J. B. Edmonson, J. O. Engleman, and W. J. Cooper, and such political scientists as Frank Bates, B. F. Shambaugh, B. A. Arneson, Karl F. Geiser, Peter H. Odegard, Edgar Dawson, John P. Senning, John A. Lapp, and others. More than 650 invitations to attend this round table were sent to presidents of normal schools and teachers colleges, professors of education in universities, directors of social studies in large high schools, superintendents of schools, and others. An average of sixty persons attended the round table, and the opinion seemed general that it should be repeated at the next annual meeting.

In promoting coöperation with other groups interested in the social studies, the subcommittee has worked with the American Historical Association Commission on the Social Studies, of which two leading political scientists, C. A. Beard and C. E. Merriam, were already members. A committee consisting of Edgar Dawson and E. W. Crecraft has also been appointed to coöperate with the American Council of Education's Committee on Materials for the Social Studies in the Schools, headed by Dr. Judd.

2. *Pre-Legal Studies.* A second effort of the subcommittee has been the establishment of a Committee on Political Science as a Pre-Legal Study, to serve with a similar committee appointed by the Association of American Law Schools. For this purpose the subcommittee has associated with itself F. W. Coker, R. E. Cushman, C. H. McIlwain, and Raymond Moley. This group has had one meeting, at Princeton on December 12.

3. *Conferences.* The third effort of the subcommittee, under the direct superintendence of its chairman, H. W. Dodds, has been the organization of conferences designed to promote better understanding between political scientists, politicians, and public officials. Four such conferences have been held this year,[1] and nine have already been scheduled for next year. The membership of these conferences is restricted to invited guests, an effort being made to hold the number to not more than twenty-five. The meetings have no formal programs and no publicity, although an

[1] At the University of Wisconsin on rural local government; Dallas, Texas, on state finance; the University of Missouri on county government; and Princeton University on the reports of the New Jersey Tax Survey Commission dealing with local government reorganization and finance.

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analysis of the facts and issues involved in the subject of discussion is furnished in advance to each participant. Emphasis is placed upon free discussion and frank exchange of viewpoints. The purpose is to promote mutual acquaintance of and unhampered interchange of opinion by political scientists and public officials, not to draft programs of political action or governmental reform. The conferences therefore do not frame resolutions or arrive at definite conclusions.

The process of getting conferences of this type under way has been a long and arduous one. Such conferences have never before been attempted, and it was somewhat difficult at first to bring the members of the Association to an understanding of their character and advantages. The first step of the subcommittee was to organize an advisory council consisting of Willis J. Abbott, Henry J. Allen, Bruce Bliven, Louis Brownlow, Harry F. Byrd, Morse A. Cartwright, William J. Cooper, Bronson Cutting, Walter F. Dodd, Joseph B. Ely, Mrs. George Gellhorn, Arnold B. Hall, Frank B. Kent, David Lawrence, George F. Milton, Chester H. Rowell, Elmer Scott, Walter Dill Scott, Murray Seasongood, Miss Belle Sherwin, Henry Suzzallo, Henry W. Toll, Frederic C. Walcott, and George White. A meeting of this advisory council was held at Princeton on March 27 and 28 to discuss the nature of the conferences, topics to be considered in them, and the technique of their management.

On the first of May, the subcommittee opened an office at 20 Nassau St., Princeton, and shortly thereafter it addressed a questionnaire to all the individual members of the Association explaining the nature of the conferences and requesting suggestions for topics, places, and personnel. A hundred and one members responded with suggestions for nearly two hundred conferences. With these suggestions as a basis, the subcommittee went to work to get individuals or groups to undertake the actual organization of conferences. We had hoped that the local committees would be in a position to finance their own conferences, but the difficulty of raising money, peculiarly great at this time, proved an invincible stumbling-block in the way of getting them started. At its Charlottesville meeting, the Committee on Policy authorized the subcommittee to offer from its funds a subsidy of not more than five hundred dollars for each such conference. The offer of financial assistance immediately stimulated the desire of local groups to hold conferences, and it now seems that the number which can be held will be limited only by the funds available for the purpose. Definite figures are not yet at hand as to the cost of the four conferences. The conference at the University of Wisconsin, however, cost only $206.56, and it is probable that the cost of most of those now scheduled will fall below the five-hundred-dollar mark. In most cases, some institution will provide a place of meeting and guest quarters in

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dormitories, etc., at less than commercial rates. All of the four which have been held this year and those scheduled for next year have been organized upon a local basis, and all of those already held and most of those scheduled deal with subjects in the field of local government. It was thought wise to limit the subjects and areas of the conferences, not only from motives of economy, but also because the subcommittee felt that the technique of handling the conferences should be better developed before conferences on a national scale were attempted.

The organization of the conferences has been found to require a great deal of correspondence; a very careful set of instructions has been prepared for the benefit of those holding them, but this does not obviate the necessity for constant communication between the local committees and the office in Princeton. Each conference as it is held adds to a fund of experience which is of greater and greater value in holding future conferences, but such experience must of necessity be accumulated in some central office and thence redistributed. It cannot flow directly from conference to conference. Careful supervision and unceasing attention to every detail are essential.

As to the success of the conferences, the testimony is unanimous. The subcommittee has prepared a report in which the opinions of many persons in attendance have been digested. This report is available in mimeographed form, and persons who desire copies of it, or who are interested in the possibility of a conference in their region, are invited to write to Professor Dodds at the address given above.

Activities of the General Chairman. Some idea of the varied activities of the General Chairman may be gathered from the following statistics. He has made sixteen trips in the interest of the Committee on Policy, some of considerable duration. He has stopped to transact business on behalf of the Committee at sixteen different places a total of twenty-nine times. For example, he has visited Washington five, Princeton four, and New York eight times. He has attended eleven meetings of the Committee on Policy and its subcommittees, addressed three state and regional associations, attended two conferences of officials and experts, and participated in four or five committee meetings or conferences with other groups. The total amount of time spent away from Ann Arbor on the service of the Committee amounted to sixty-two days, or the equivalent of two full months of time. Assuming another month spent at Ann Arbor on the work of the Committee, we may judge that at least one quarter of the time of the General Chairman has been devoted to the work of the Committee.

Important Matters Referred to the Committee. At its 1930 meeting in Cleveland, the Council referred to the Committee on Policy two major

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questions: (1) the relationship of the American Political Science Association to state and regional political science associations, and (2) the request for coöperation from the National Advisory Council on Radio in Education.

1. *State and Regional Associations.* In the opinion of the Committee, the establishment of state or regional associations expresses a natural desire on the part of members of the profession for smaller and more intimate meetings in which a larger proportion of the membership may have an opportunity to read papers or participate in discussions, and which may be attended at less financial sacrifice than the annual meetings of the national Association. At the same time, it has seemed to the Committee that the encouragement of such associations could be made a means of promoting membership in the national Association and of extending its influence among the rank and file of the profession, especially among teachers in teacher-training institutions and in public and private schools. Accordingly, the Committee adopted at its Charlottesville meeting the following resolution, which was subsequently approved by the Council:

"(1) That we encourage the formation of state or regional political science associations (whether they are to be the one or the other depending upon local circumstances); or where, as in Michigan, there exists a history and political science section of the State Academy of Science, Arts, and Letters, that we take advantage of the existing organization even though it is not strictly a political science association; (2) That we invite the president or a representative of each of these associations to meet at the Christmas meeting with the Council and the Committee on Policy with a view to promoting a unified program of activities; (3) That we particularly emphasize with the regional associations their importance as a means of reaching the rank and file of the teaching profession, especially with reference to training for citizenship; (4) That we offer to the membership of state and regional associations an associate membership in the American Political Science Association at four dollars (in addition to their membership in their own associations)—that is, at enough to pay for the cost of sending them the REVIEW. These associate members will not, of course, have the right to vote at meetings of the Association.

The presidents of eight such associations were present at a joint session of the Council and Committee on Policy at Washington on December 27. As a result of extended discussion, the Council voted to rescind its approval of the fourth paragraph above, it being the view of the representatives of the state and regional associations that more could be accomplished by a plan of mutual assistance, the national Association sending speakers to state or regional meetings and the local associations con-

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ducting a direct campaign for membership in the national Association.

2. *Civic Education by Radio.* The National Advisory Council on Radio in Education, an organization of leaders in education, government, industry, and community affairs whose purpose is to foster the better utilization of radio as an educational instrument through the development of sound programs and the study of the most effective technique of broadcasting them, has been endeavoring to form a series of committees representing the various fields of learning each of which shall prepare integrated series of broadcast programs. In response to its request, the American Economic Association and the American Psychological Association have each participated in the preparation of weekly programs which have recently been put on the air.

The request which the Radio Council addressed to the Political Science Association was referred to the Committee on Policy. Correspondence was begun between the chairman of the Subcommittee on Political Education and Levering Tyson, the director of the Radio Council, but no definite steps were taken until last fall, when, following a conference between Mr. Tyson and the General Chairman of the Committee on Policy, it was decided to organize, as a branch of the Subcommittee on Political Education, a committee to prepare a program of political science broadcasts. Mr. Tyson and the General Chairman went so far as to endeavor to induce R. C. Brooks to accept the chairmanship of such a committee. Professor Brooks ultimately declined, but while negotiations were still in progress the National Broadcasting Company offered, through the Radio Council, to donate at least a half-hour weekly on Tuesday evenings for four years for programs in civic education. The value of the time so offered is more than a million and a half dollars. This presented a challenge which could not be neglected and called for the organization of a coöperating committee on broader lines than would have been necessary if the Association were merely to sponsor a brief series of broadcasts as originally intended. The General Chairman therefore assumed the authority to join with Mr. Tyson in inviting a group consisting of political scientists, educators, and public men to consider what should be done. At this meeting were present Guy Moffett of the Spelman Fund, Frederick P. Keppel of the Carnegie Corporation, Charles A. Beard, Charles E. Merriam, E. W. Crecraft, H. W. Dodds, C. F. Dolle, W. F. Russell, W. G. Carr, William Hard, John Ellwood, and Thomas H. Reed, chairman.

This meeting directed the General Chairman of the Committee on Policy and Mr. Tyson to appoint a committee of not more than fifteen persons to coöperate with the Radio Council in the preparation of a four-year program of civic education by radio. The following persons have accepted membership on this committee: Charles A. Beard, George S.

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Counts, William Hard, John A. Lapp, Katherine Ludington, Joseph McGoldrick, A. B. Meredith, Charles E. Merriam, Harold G. Moulton, Frederic A. Ogg, Murray Seasongood, Bessie L. Pierce, Chester H. Rowell, and Thomas H. Reed. At a meeting held in New York on December 12, this committee adopted a tentative budget totaling $125,000 a year for four years, to be raised by the Radio Council with the help of the committee, and created an executive committee consisting of John A. Lapp, Joseph McGoldrick, George S. Counts, William Hard, and Thomas H. Reed, chairman, actively to direct the preparation of a program and the other steps necessary to secure a radio audience and leave upon it a permanent impression of real educational value. It is not always realized that it is not enough to put a good address on the air. Many good addresses go almost unheard and are quickly forgotten by the few who hear them, simply because they have not been sufficiently advertised in advance and because there has been no adequate follow-up procedure. It is necessary to secure a radio audience by awakening in advance a desire to hear a particular program, and it is necessary for good educational results to supply syllabi, reading lists, and printed copies of the address after its delivery.

The project which this committee has before it affords the greatest single opportunity directly to affect citizenship in the United States that has ever been offered. The Political Science Association cannot afford to neglect it. Representatives of our profession have rightly assumed places of leadership on this committee; and at the 1931 meeting of the Association the Committee on Policy, the Executive Council, and the Association itself successively ratified the action of the General Chairman in this matter and expressed their deep interest in the success of the project.

Summary. The first year of the Committee on Policy under the subsidy from the Carnegie Corporation has been one of tentative efforts and trial experiences. It would have been reasonable to expect that the Committee would not be able in its first year to do more than gradually find its way into fruitful activities. As a matter of fact, the Committee has done much more than this. It has prepared a large-scale research project —a survey of training for the public service. It has put in the way of solution the problem of relating the rank and file of our profession to the American Political Science Association. It has opened a way for the enlargement and development of the AMERICAN POLITICAL SCIENCE REVIEW. Through the conferences fostered by the Subcommittee on Political Education, it has established and proved the value of a new means of contact between politicians and political scientists, equally advantageous to both. It has asserted the rights of government in the school curriculum and made real progress toward a better understanding between educational author-

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ities and political scientists as to the supremely important problem of training for citizenship. It has assumed leadership in the greatest movement for adult civic education that our country has yet seen. It would seem that Beard was right when he advised us to create a Committee on Policy.

The general chairman wishes to take this opportunity to thank the members of the Committee and those who have been associated with them for their loyal and self-sacrificing efforts in making the work of the Committee a success. Many of them have given prodigally of their time and energy, and it is to them that we owe the record of this year's achievements.

Respectfully submitted,
THOMAS H. REED, *General Chairman*

FINANCIAL STATEMENT, COMMITTEE ON POLICY
Appropriation Statement as of December 21, 1931

General Committee Fund			
Receipts			
Unappropriated balance	$2,732.68		
Interest	133.11		
	$2,865.79	$2,865.79	
Expenditures			
Office	$ 368.56		
Travel	2,752.87		
	$3,121.43	$3,121.43	
Deficit		$ 255.64	$ 255.64 (—)
General Chairman			
Receipts			
Appropriation	$1,500.00		
Additional appropriation	400.00		
	$1,900.00	$1,900.00	
Expenditures			
Office	$ 693.57		
Travel	945.45		
	$1,639.02	1,639.02	
Balance		$ 260.98	
Expenditures from cash revolving fund			
Office	$ 21.50		
Travel	5.21		
	$ 26.71	26.71	
Net balance		$ 234.27	234.27

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Subcommittee on Research			
Appropriation		$3,500.00	
Expenditures			
Office	$1,048.63	1,048.63	
Net balance		$2,451.37	2,451.37
Subcommittee on Political Education, General Account			
Appropriation		$4,750.00	
Expenditures			
Office	$2,972.22		
Travel	1,741.43		
	$4,713.65	$4,713.65	
Net balance		$ 36.35	36.35
Subcommittee on Political Education, Civics Study			
Appropriation		$ 750.00	
Expenditures			
Office	$ 158.98		
Travel	644.20		
	$ 803.18	803.18	
Deficit		$ 53.18	53.18 (—)
Subcommittee on Publications			
Appropriation		$ 750.00	
Expenditures			
Office	$ 272.87	272.87	
Net balance		$ 477.13	477.13
Subcommittee on Personnel			
Appropriation		$1,775.00	
Expenditures			
Office	$ 464.85		
Travel	540.05		
	$1,004.90	1,004.90	
Balance		$ 770.10	
Expenditures from cash revolving fund			
Office		93.15	
Net balance		$ 676.95	676.95
Net total balance			$3,567.25

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Budget for 1932

Receipts

Grant from Carnegie Corporation for 1932	$15,000	
Balance from 1931	3,000	
		$18,000

Allocation

General Chairman expenses	$ 1,400	
Research subcommittee	3,000	
Personnel subcommittee	1,600	
Publications subcommittee		
1. General Expense	400	
2. REVIEW	600	
Political Education subcommittee		
1. Training for citizenship	1,200	
2. Political conferences	8,440	
General fund	1,360	
		$18,000

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BOOK REVIEWS AND NOTICES

EDITED BY A. C. HANFORD
Harvard University

The Making of Citizens. By CHARLES EDWARD MERRIAM. (Chicago: University of Chicago Press. 1931. Pp. xiv, 371.)

Is there anything new under the sun? There is. It is the calm and untroubled manner in which scholars such as Charles E. Merriam look upon the tumultuous forces of the modern world swirling, clashing, bearing fragments of humanity hither and yon, and driving them all, even against their wills, into higher and higher forms of integration. Of course Aristotle was possessed by a kindred spirit as he sought to understand the realities of his little Mediterranean scene and to derive from the materials he collected a system of ethical guidance for the statesman; but at bottom he was a Greek belonging to a dominant class and devoid of that immense universality that characterizes modern science. Now we have reached a stage of intellectual development in which a distinguished university professor may knock at all doors, look with unblinking eyes on all spectres, apply the elenchus to all ideologies, call all spades by their vulgar names, describe all manipulations with frosty precision, and conclude by asking: Is it not possible for human beings to adapt themselves painlessly to change and to live decently and honestly together in this vale of historic tears? If the concept itself is not entirely novel, at least the widespread acceptance of it as a guide to civilized men and women is a sign of new times.

The volume before us is a crown to the various studies of civic education in the leading countries of the Western world with which the interested public is already familiar. It is a comparison of the materials and methods employed in France, Germany, England, Italy, Soviet Russia, Austria-Hungary, Switzerland, and the United States, and a summary in which all the threads are drawn together in a general pattern. The body of the book comes under three main heads: the substances of civic cohesion, techniques of civic training, and a bird's-eye view of national civic training systems considered individually. In the first of these three divisions, territorial, ethnic, religious, and class or economic-group forces at work in nationalism are enumerated and analyzed with a kind of Olympian serenity disconcerting to those who imagine that they bear eternity and omniscience under their own hats. Then come what Mr. Merriam calls "the techniques of training," a study of the uses of schools, political parties, language and literature, the press, movie-talkies, impressive political personalities, the prestige values of armies and navies,

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symbolism, the pomp of funerals, and the tom-tom of endless reiteration employed to discipline the masses. This is followed by concrete illustrations drawn from particular systems of civic education. At the end is a summary closed by conclusions.

And what is the upshot? Increasing attention is being given to the systematic and conscious development of elaborate mechanisms of civic training. There is less and less reliance on unorganized drift. The school, press, political parties, and organized propaganda are the chief centers of interest and activity in the development of civic attitudes and skills. So far, it all looks mechanical; but thought is abroad also in the world: "Fundamental and revolutionary changes are likely to be made and indeed are under way" in adjusting traditional methods to the need for attitudes and aptitudes required for adaptation to a rapidly changing world, in bridging the gap between special loyalties and the demands of larger wholes, in the use of exact knowledge and scientific methods in realizing more perfect social orders. "The long, long line of those who have marched to their doom, in slavery, prison, or the grave, in the tragic struggles for political readjustments, is not yet ended. But there is reason to believe that it is possible for humanity to train itself in such a way as to reduce the terrible and agonizing cost of men's adaptation to each other and to social change, and to release the finer, richer, more beautiful, and satisfying possibilities of coöperation in mankind" (p. 362).

Evidently here is a book which those who concern themselves with statecraft and "the social studies" should read and heed. It suggests a pause in the headlong pursuit of one thing after another, a taking of stock, a recurrence to first principles, a survey of shallows, shoals, and undertows. It is always good for those long bathed in the sunshine of prosperity to draw near to ultimate things, especially good for those numerous professors of educational doctrinology who seem to imagine that the great trick is to be turned by the project nostrum, the unit method, the counterpoint scheme, the underplot devices, the pre-digest contrivance, the trump-card system, or some other flip-flop of pedagogical legerdemain. The therapeutic value of Mr. Merriam's volume is not the least of its merits.

CHARLES A. BEARD.

New Milford, Connecticut.

Stephen J. Field: Craftsman of the Law. By CARL BRENT SWISHER (Washington: The Brookings Institution. 1930. Pp. 473).

Dr. Swisher's biography of Justice Field is a book of genuine value and importance. It is not a study in constitutional law and attempts no orderly analysis and synthesis of the constitutional doctrines which Field

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held. But it is a study of the materials, human, social, economic, and political, out of which constitutional law, as well as other kinds of law, are built up. From it we get an accurate impression of the strategic influence which Field exerted in the development of American law. A dominating personality, sublimely confident of the correctness of his own views, he took his seat on the Supreme Court on the very eve of the great social and economic revolution which followed upon the heels of the Civil War. He retained that seat for nearly thirty-five years as justices came and went, and in no small measure he helped to shape the legal doctrines by which the new economic order was to be governed. A biography of Justice Field is more than the life story of a single judge; it is a large and important chapter in the history of the Supreme Court.

The author has given us a vivid picture of the man Field. He shared with his brothers, David Dudley and Cyrus, the brilliance of intellect and driving force of character which made the Field family one of the most distinguished which this country has produced. Those qualities were sharpened rather than impaired by the tests imposed by the raw conditions of pioneer life in early California. The dramatic character of his adventures and vicissitudes during those early days would make excellent moving picture material. By shrewdness and somewhat ruthless strength he fought his way up until he stood upon the threshhold of his judicial career, a man of many battles, many fierce hatreds, a man relentless and self-reliant, irrevocably sure of the rightness of his own convictions, confident of his own great abilities, and supremely ambitious to make his mark upon his generation. His intense individualism, his almost religious devotion to the sanctity of individual civil liberty as he conceived it, and his firm belief in the value and services rendered by combinations of capital and the great public utilities of the country were all products of his long experience in a state emerging from a pioneer society under the influence of the new economic forces which were revolutionizing the life of the country.

Those familiar with the punctilious regard which the Supreme Court at present exercises with reference to any matter which may affect its reputation for complete disinterestedness and non-partisanship will find certain striking contrasts in the judicial career of Justice Field. In the first place, during a considerable portion of his tenure on the Supreme Court his older brother, David Dudley Field, under whom he had begun the study of law, was one of the recognized leaders of the American bar. He argued case after case before the Supreme Court. Among them were such outstanding cases as Cummings v. Missouri, *Ex parte* Milligan, and *Ex parte* McCardle, in each of which Justice Field sat and supported the side which his brother represented. There is no suggestion of direct broth-

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erly influence, but the modern sense of judicial propriety would make such a situation impossible today. In the second place, Field made no secret of his close personal friendship with numerous leading business men and railroad magnates of his day, many of whom came to be involved in important litigation before the Supreme Court. He was bitterly attacked by his enemies for his social connections with men of wealth, connections which they believed influenced his views as to the legal rights and duties of large combinations of capital. Finally, Justice Field was actively interested in securing the presidential nomination and allowed a vigorous campaign to be carried on in his behalf while he remained on the Court. There is no doubt that he was bitterly disappointed at his failure to secure the nomination. He never lost his interest in the political struggles in California in which he had so vigorously participated before he ascended the bench. He never forgot or forgave an enemy, and nowhere does he appear to less advantage than in using his personal influence with the President in Washington to prevent the appointment to office of men who had incurred his ill will.

Field's main contribution to American constitutional law probably lies in the emphasis which he placed upon the sanctity of what he regarded as "inalienable rights." These rights, the scope and character of which he translated in terms of a strict individualism, he believed to be sacredly guarded by the Constitution, and he bitterly assailed every attempt to invade or restrict them. Thus we see him at various times and under various circumstances the defender of the citizens of the defeated South in cases involving the problems of reconstruction, the protector of the Chinese immigrant against persecution and aggression on the Pacific coast, and the friend and sponsor of the railroads and public utilities which were being subjected to the onslaughts of enraged legislatures during the days of the Granger movement. It was the same philosophy which made him the relentless opponent of the legal tender laws, which he believed impaired the contract rights of creditors for the benefit of debtors, and which placed him with the majority of the Court in the decision invalidating the income tax act of 1894. It was due in no small degree to his insistence and continued pressure that the Court finally abandoned the narrow interpretation of due process of law propounded in the Slaughter House cases for the present doctrine which makes due process an effective instrument for striking down practically any type of governmental action affecting liberty or property which seems to the Court arbitrary and unreasonable. Field lived to see his doctrine of inalienable rights safely embedded in the concept of due process of law, and that achievement must have seemed to him to justify thirty-four years of judicial service.

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Any account of the events of Field's dramatic career would be interesting, but Dr. Swisher has told the story in a thoroughly readable style and with a nice sense of balance and proportion. He has had access to many sources of information previously untapped, and he has given us a reliable account of many incidents, such as the notorious Terry affair, about which there has previously been some uncertainty and confusion. The tone of the biography is friendly, but not fulsomely eulogistic. It carries an air of objectivity. It leaves the reader with a vivid impression of a powerful figure for whom he has great respect, some admiration, and little affection. It is the type of biography which we badly need.

ROBERT E. CUSHMAN.

Cornell University.

Family Quarrels—the President; the Senate; the House. By GEORGE WHARTON PEPPER. (New York: Baker, Voorhis and Co. 1931. Pp. ix, 192.)

This volume was written by an ex-senator—or rather the ex-senator—from that by no means backward state of Pennsylvania. Formally, it embodies the William H. White lectures which Mr. Pepper delivered before the University of Virginia Law School, presumably during the session of 1930-31. Aesthetically, its binding is none too attractive and the paper rather coarse. Stylistically, it preserves that unctious manner for which the author is famous, especially among the readers of Mr. Frank R. Kent's column in the Baltimore *Sun*. Substantively, it is a semi-popular discussion of semi-technical problems in what may be called constitutional domestic relations. The President, the Senate, and the House are just one happy family. Still, they have their little misunderstandings; and the author discourses of family quarrels over treaties, over nominations and removals, and over congressional investigations.

Waiving a reviewer's prerogative of omniscience, the present writer acknowledges that he got both information and food for thought from the perusal of the book. This may mean merely that the reviewer is not well read. For seventy-two titles are listed under "books and periodicals consulted." Yet it will not be surprising if the book is found stimulating by others. For Mr. Pepper is recognized as an extremely able lawyer and a man of wide reading and scholarly leanings. He himself admits that his mind has a judicial quality (p. 85). Furthermore, he did sit in the Senate for awhile.

The author frequently expresses his own opinions. These will seem sound to those who agree. The reviewer happens to agree with several of the most important. He joins Mr. Pepper in disagreement with the *dicta* in Myers v. United States, and hopes with the learned losing counsel

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in that case that the last word has not been said upon the removal issue. He agrees that senatorial inquisitions, while dangerous, may be necessary and proper if conducted with due restraint. He is less enthusiastic than the author over the Senate's share in treaty-making. That may merely mean that the reviewer is a Woodrow Wilson Democrat. Nor is he so sure as the author that the Senate should make "a distinctly subordinate use of its power to reject nominations" (p. 86). The political scientist must judge a case like the Hughes case by its consequences rather than by senatorial motives.

Three errors were noted without meticulous search. The date 1789 at the bottom of p. 91 should read 1868. "Thoch" at p. 43, note 75, and p. 192, should read "Thach." "Molloy" at p. 191 should read "Malloy." It is correctly spelled at p. 9, note 13.

JAMES HART.

Johns Hopkins University.

State Government. By FINLA GOFF CRAWFORD. (New York: Henry Holt and Company. 1931. Pp. x, 533.)

The increasing interest in state government would seem to answer finally the nineteenth-century suggestions that the states might advisedly render up their functions to the national administration. The number of textbooks on state government that have appeared since Professor A. N. Holcombe's pioneer work in 1916 and their several revised editions raise the query: Why another? Each work thus far has answered that question. Professor Holcombe presented his original study, as well as his revisions of 1925 and 1931, from the philosophical approach. Professor John M. Mathews in 1917 and in 1924 utilized the administrative viewpoint. Professor Everett Kimball in 1917 and Dr. W. F. Dodd in 1922 and 1928 based their works largely on the legal foundations. Then in 1928, Professors F. G. Bates and O. P. Field refined the subject into a well-proportioned, smooth-reading descriptive survey. And now, Professor Crawford essays the social and economic approach, emphasizing the functional features of the state. While the works of Holcombe, Mathews, and Dodd may be classified as standard treatises, and those of Kimball and of Bates and Field as textbooks, that of Crawford might occupy an intermediate position as a standard textbook. In it he shows that the newer social and economic tasks which are accruing to the states forestall complete federal centralization or nationalization, although they do call for greater national-state coöperation. Inductively, this is an essential contribution of the book, but it seems not to be dogmatized unduly.

Professor Crawford asserts that the purpose of his volume is "to present a picture of state government in all its relationships." To do this,

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it would seem necessary to present the relationships of intra-state geography, state history, population, religious bodies, propaganda organizations, and other dim but dynamic factors in social causation that operate behind the obvious governmental agencies. Here his picture, like those of his precursors, remains rather flat. It is sadly lacking in perspective and shading—leaving this vital complement yet unsupplied to the undergraduate student. He adds that "there is an attempt to present a realistic approach to government." This laudable objective should warrant greater attention to realistic backgrounds of political phenomena. And what political unit better lends itself to the study of social adjustment and governmental action than does the American state?

That which Professor Crawford has presented is exceedingly creditable. He shows graphically the interdependence of the states with each other, with their respective local units, and with the national government. He emphasizes the centralizing and decentralizing forces as regards both the states and the nation, and the states and the counties. Conventional subject-matter is given due space proportions. Special chapters are devoted to the independent administrative offices, reorganization plans, the civil service, the budget, and two chapters are spent on taxation. The social problems of crime and correction, charity and health, and labor are similarly treated, with subordinate consideration of such timely topics as state unemployment insurance, old age security, health insurance, and state employment agencies. The economic subjects commanding special attention include the state regulation of business, the control of public utilities, insurance, banking; conservation movements, water power resources, agriculture, and transportation, within commonwealths. Quite generally, these problems are treated with helpful historical analyses along with functional applications. The footnotes are mercifully minimized. The well organized bibliography is gracefully relegated to an appendix, thus avoiding pedantic intrusion upon the rapid reader.

Inevitably, some minor discrepancies have crept in, e.g., the reference on page 344 to "the U. S. food and drug act of 1907" instead of 1906. To this is added the assertion that "following the passage of this law, an agency in each state took over the task of protecting the food and milk supply," etc. This would imply that the national act fostered the state agencies. Yet forty-six of the states and territories had some machinery for the enforcement of sumptuary laws prior to the national act of 1906.

The virtues of Professor Crawford's book, added to those previously contributed by kindred works, ought to be soul-satisfying to those ever on the watch for progress in this basic center of American politics. May it not be hoped, however, that future revisions will survey background motivations not yet fully appraised in existing treatises? For this volume

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stimulates a desire for the eventual evolution of a fuller treatise on the American state as such, a composite study that would include not only politics and government, but likewise the forces back of these phenomena —the complete Commonwealth.

MILTON CONOVER.

Yale University.

Die Moderne Nation. By HEINZ O. ZIEGLER. (Tübingen: Verlag von J. C. B. Mohr (Paul Siebeck). 1931. Pp. viii, 308.)

"Where the sentiment of nationality exists in any force, there is a prima facie case for uniting all the members of the nationality under the same government. This is merely saying that the question of government ought to be decided by the governed." In this simple fashion, John Stuart Mill in the middle of the last century disposed of the problem of the modern nation; and there were only a few, such as Lord Acton, who had any serious doubts either as to the simplicity or the desirability of the proposition that the nation had, so to speak, a natural right to shape the state in its own image.

Dr. Ziegler's book is good evidence of the distance that we have travelled in this respect in the seventy years since the appearance of Mill's *Representative Government.* What was axiomatic before, at least as far as liberal-minded thinkers were concerned, has now been recognized to be of the greatest complexity, difficulty, and danger. In the application of the principle of nationality to the map and to the political structure of the world, no less than in the realms of theory, it has been time and again demonstrated that the simplicity and straightforwardness which Mill assumed to exist are perhaps the least of the attributes of the principle.

Despite all the research that has been carried on in examining both the general problem and particular aspects of it, we are still left with no satisfactory answers to the fundamental questions with which the modern nation confronts us: What is a nation, and how did it come about that this particular variety of social grouping or community came to have an almost unquestioned predominance in the minds of men? It is to this latter question that Dr. Ziegler devotes himself primarily and with a degree of success which gives his book good claim to a place among the few really significant studies of the subject.

To the present reviewer, it must be admitted, it seems more than doubtful that any final answers to these questions are discoverable. Those which Dr. Ziegler puts forward have much to recommend them and are highly suggestive; but perhaps the major service that he has rendered lies in his clear statement of the problem. Analyzing the contributions

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of previous writers and thinkers, he formulates the problems that remain to be solved in such fashion as to escape the pitfalls that have lain along the paths that others have followed. One may note here his clear and destructive analysis of the *Kultureinheit* which has underlain many theories and of the *Schicksals-* and *Charaktergemeinschaften* of Otto Bauer. There is also an able examination of the doctrines of Hegel and his successors in their attempt to establish some particular social or political entity as the absolute reality of history.

For the origins of nationalism, Dr. Ziegler goes back to the French Revolution, and he suggests that nationalism emerges from the impact of the Revolution on the theories of Rousseau. From the Revolution there appears the identification of the general will and its sovereignty with the nation. Thenceforward it is largely in terms of the nation that political history must be written, both within nation-states and in their relations with each other. The free and equal individual from whom Rousseau set out has been swallowed up by the national Leviathan.

Dr. Ziegler agrees with Lord Acton that the principle of nationality is, at bottom, antithetical to that freedom of the individual which the liberalism of the last century tended to assume to be identical with the freedom of nations. In his concluding chapter, he goes on to ask whether or not the national unity which is assumed to underlie the modern democratic-parliamentary structure is in fact a bond strong enough to hold together in one political whole the present-day majorities and minorities divided essentially along economic class lines. With his conclusion that, in some countries at least, this latter division has so grievously disrupted the national community as to make democratic machinery virtually impotent, one can more readily agree than with the further suggestion that a nationalist Fascist dictatorship can reconstruct the nation through its impartial supremacy over a society frankly built up on the basis of class and functional differences. Given a society torn by class dissensions, it is difficult to conceive the dictator who can raise himself impartially as benevolent despot above the classes and their conflicts.

RUPERT EMERSON.

Harvard University.

China in Revolution; An Analysis of Politics and Militarism Under the Republic. By HARLEY FARNSWORTH MACNAIR. (Chicago: The University of Chicago Press. 1931. Pp. xl, 244.)

In this volume Professor MacNair has printed, after some revision, a series of public lectures delivered at the University of Chicago in the spring of 1930. He deliberately excluded from consideration the religious, intellectual, social, and economic aspects of the revolution in

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China, as well as the diplomatic aspects, which he has treated in other well-known works. But the military and political aspects of twenty years of war and politics in revolutionary China afford abundant materials for such a volume as this, and Professor MacNair has used them to construct a narrative which will give the general reader a vivid picture of the course of events from the beginning of the revolution to the summer of 1931. There are also pen-portraits of leading actors in the revolutionary drama and an instructive account of the revolutionary political philosophy.

The interpretation of the politics and wars of the last twenty years in China is something on which the best informed and most judicious writers disagree. No agreement can be expected until time shall have brought a better perspective than the present generation can hope to enjoy. Professor MacNair's point of view should be noted, not for the purpose of approval or disapproval, but in order to put his book in its proper place in the literature of the Chinese revolution. "The latest outbreak," he writes (p. 225), referring to the conflict between Nanking and Canton in the spring of 1931, "surprises no student of the revolution in China. It merely demonstrates that, despite the optimistic claims of Nanking to rule an already unified country, the old forces of decentralization, provincialism, and jealousy among the generals and politicians of any leader who presumes to lead have not been overcome by the Kuomintang national government conspicuously more successfully than they were by Yuan Shih-kai." It is evident that Professor MacNair is not to be included among the more sanguine interpreters of the revolution.

There is one point particularly on which the present reviewer must register his dissent from Professor MacNair's views. Discussing the famous *San Min Chu I,* or *Three Principles of the People,* in which Sun Yat-sen expounded his revolutionary program for the purpose of propaganda among the masses, Professor MacNair states (p. 88) that the exposition of the first two principles, that is, the principles of nationalism and democracy, reveals "the viewpoint of the follower of Marx," but that in the discussion of the third principle "a definite change of view is indicated." The opinion that Dr. Sun was a Marxian socialist in the spring of 1924, when the lectures on nationalism and democracy were delivered, is not confined to Professor McNair, but the reviewer, having examined the available evidence, cannot subscribe to it. On the contrary, it seems clear, both from the internal evidence afforded by Dr. Sun's writings and from the testimony of his associates, that he was never a Marxian socialist. The interesting work by Dr. Maurice William of New York City, entitled *The Social Interpretation of History,* which Dr. Sun

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cited in the third part of his lectures in support of his expressed opposition to Marxian socialism may have been employed by him to strengthen his case against the Communists, but it could not have weaned him from Communist opinions which he never held. It could only have confirmed him in opinions originally formed by him long before.

ARTHUR N. HOLCOMBE.

Harvard University.

Fascism. By MAJOR J. S. BARNES. The Home University Library. (New York: Henry Holt and Company. 1931. Pp. 252.)

Liberty and Restraint. By LOUIS LE FEVRE. (New York: Alfred A. Knopf. 1931. Pp. xxix, 346.)

Modern Civilization on Trial. By C. DELISLE BURNS. (New York: The Macmillan Company. 1931. Pp. xi, 324.)

Although, naturally, a little discipline is always a good thing, and although the *raison d'être* of Fascism is a world chaos generated by strident individualism, still Fascism wears no iron heel—not, at least, the *philosophy* of Fascism. It is essentially catholic—catholic enough to embrace the Catholic Church and the state, capital and labor, city and country. It is a powerful solvent in which are resolved science and religion, freedom and law, the outlooks of ancient Greece and Rome. The theory is that the otherwise conflicting forces will all work together for the glory of the Fascist state—which is something more than its members and is ruled by the few who alone are gifted to discern the "objective and discernible moral law." And there, husked and shelled, is the bitter kernel of Fascism. Beguiling words, such as Barnes uses, were never more in place. For it is no slight task to disguise such a doctrine as a "new age of faith," civilization's great step forward. In any case, in so far as Barnes correctly interprets Fascism, Burns must except Italy when he says "dictatorship is a method of modernizing mediæval Europe."

An answer to such an outcome is afforded by Le Fevre. Fascism indeed evades him so far as his initial definition of liberty is concerned: "the freedom of the individual from any restraint or control by others, except by an authority and for a purpose which the person restrained recognizes as legitimate," its denial causing biologic havoc in peoples just as in caged animals. Fascists, imbued with the spirit of Fascism, have liberty in this sense. However, Le Fevre advances his thesis to a plea for democracy, i.e., self-government. It is not merely that "no group of men have ever been wise and benevolent enough to be trusted with unlimited power." More than that, the best of governments *a supra* have either been attended by mediocrity of culture or followed by social disintegration, or both. Such at least is the inference from historical data gathered far and wide, and with insight, by Le Fevre.

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Burns completes the answer to Barnes' apology. Le Fevre points out the evils of restraint. Burns denies, although mostly by implicit assumption, that human nature is unfit for responsibility. But his purpose here is not to recover humanity from the malingering of mediævalists; rather to survey modern democratic civilization.

Characteristically, Burns meets the critics of democracy squarely. Do the radio, movies, and jazz distress them? Are they fretted by the standardization and quantitativeness incidental to machines? Does mass education seem futile, democracy inefficient? Burns is ready with a reply. First of all, it is too much overlooked that while the new values enjoyed by the masses may possess a low status, yet they exist where formerly was a void. Secondly, just as some foods unpleasant of odor are excellent of taste, so participation may change perspective. In any case, participation, not aloofness, is the key to improvement; and surely the answer to the evils of education and democracy is not ignorance and despotism.

Of the two major evils of today, neither is intrinsic to democracy. One is the exploitation of primitive peoples for economic gain. In its actual manifestation, this has generally been grossly unethical, and a civilization which is complacent of such wrong-doing is surely on trial. The other evil is the race in armaments. Preparation for defense means ultimately war—of this Burns is firmly convinced—and war more and more nearly approximates hell.

L. M. Pape.

University of Chicago.

The French Civil Service: Bureaucracy in Transition. By Walter Rice Sharp. (New York: The Macmillan Company. 1931. Pp. xii, 588.)

The studies on which this excellent volume is based were begun by Dr. Sharp in 1920-22, when as an American field service fellow the author studied at the Universities of Strasbourg, Paris, and Bordeaux. They were continued in 1927 with the aid of a fellowship of the Social Science Research Council, the present volume thus representing a mature and intimate knowledge of the French *fonctionnaire.*

Returning to France in 1927, the author had to choose between a monograph on some relatively restricted phase of the public service and a more general account intended to cover a wide range of relevant material. Wisely, the choice fell upon the latter alternative, with the result that the student of comparative administration now has at hand a well-balanced and systematic descriptive and analytical survey of the French civil service.

The book is written, in fact, with a fine appreciation of the larger aspects of a bureaucracy in modern society, "with the conviction that the legal and technical phases of the problem can be understood only

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in the light of their larger sociological and psychological setting." So the author has "deliberately devoted as much space to questions of personality and temperament, to the ramification of *bloc* politics and syndicalism in the civil service, to the influence of *cameraderie à la française*, and to the socio-economic foundations of government employment, as to the more formal aspects of recruitment, training, classification, compensation, promotion, transfer, tenure, and discipline."

After three preliminary chapters dealing with the scope and organization of the French public service, Professor Sharp deals with the major phases of personnel management, adds a half-dozen departmental studies, a chapter on the civil service of Bordeaux, and concludes with three stimulating chapters on official bureaucracy and the public, administrative syndicalism, and the renovation of bureaucracy. This is a good deal to pack between the covers of one book, and it is perhaps too much to express regret that space could not be found for discussion of the shifting relations between Paris and the widely scattered centers of local administrative responsibility, and for the reproduction of some illustrative documentary material.

Comparable studies of the German and Italian civil services would go far toward rounding out the essential material in this field, and the Social Science Research Council will deserve the gratitude of students of public administration in even greater measure if on some appropriate occasion it supports such an undertaking.

LEONARD D. WHITE.

University of Chicago.

Slovakia Then and Now. BY R. W. SETON-WATSON. (London: George Allen & Unwin. 1931. Pp. 356.)

The editor of this volume was closely associated with the formation of the Czechoslovak Republic, and his interest in the problems of Czechoslovakia has been evidenced by his writing and lecturing activities. In spite of the fact that Czechoslovak statesmanship has been able to surmount most of the internal nationalistic difficulties, the problem of how far the centralizing policy of Prague in reference to Slovakia should go still remains, finding its peak in the trial and sentencing of Tuka. Seton-Watson provided us in 1924 with a frank criticism of the centralist system in a little book entitled *The New Slovakia.* Conditions, however, have changed since then; in 1927 the new provincial system of administration came into operation, and the consolidation of Slovakia has advanced.

To provide "a detailed survey of true facts, based in every instance upon a comparison between the pre-war situation in Hungary and the

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situation produced by a decade of independence'' was the purpose of the editor, who has been able to collect in this volume contributions of twenty-five writers, all of whom are Slovaks. Seven of the writers are deputies and two are senators, representing five different parties; two are members of the present cabinet, and seven others have been members of previous cabinets. The religious opinions are presented by a Catholic bishop, three Catholic priests, and two Lutheran clergymen; in addition, two high court judges, two lawyers, a bank official, an engineer, the secretary of the chief Slovak literary society, a leading diplomatist of the republic, the president of the Slovak Chamber of Commerce, and the first provincial president of Slovakia voice their opinions. A much more enlightening view of the question is gained than if the Czechs had been asked to survey the problem.

The tone of the book fully justifies the thesis of Seton-Watson: ''The transformation of Slovakia is one of the most remarkable pieces of cultural work which post-war Europe has seen (p. 63).'' The editor himself contributes one of the best summaries of the problems and development of Czechoslovakia since the war in his introductory essay on ''Czechoslovakia and the Slovak Problem.'' Here in less than sixty pages can be found a synthesis of all that a political scientist might want to learn about Czechoslovakia as a whole. The other essays, dealing with the political education of Slovakia, cultural progress, education, literature, art, music, the Catholic Church, administrative and judicial problems, economic progress, the minorities, and others are of uneven merit, though all are very informative.

The editor has erred by calling his book, in the sub-title, ''A Political Survey.'' Under such a caption, the chapters on art, music, etc., could have been eliminated. The same criticism applies to numerous excellent photographs scattered throughout the volume. A good map of Czechoslovakia is attached, though a service would have been performed by providing a map of the present provincial administration, and of the location of the various minorities. An index is lacking.

On the whole, the volume will be found indispensable to anyone interested in the problems of Central Europe.

JOSEPH S. ROUCEK.

Centenary Junior College.

Chicago Police Problems. BY THE CITIZENS' POLICE COMMITTEE. (Chicago: The University of Chicago Press. 1931. Pp. xix, 281.)

Early in 1929, former Police Commissioner Russell requested a number of prominent citizens to sponsor a thorough investigation of the police system of Chicago. These gentlemen appointed a Citizens' Committee, which in turn secured the services of Mr. Bruce Smith, of the National

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Institute of Public Administration, to conduct the survey. This volume embodies the results of the investigation.

The picture of the Chicago Police Department here presented is not an attractive one. The fundamental defect of the department is its control by and in the interest of partisan and factional politics. Commissioners of police follow one another in rapid and confusing succession. The department is so badly organized that even the most experienced administrator could not control it effectively. The Civil Service Commission has on occasion been dominated by the mayor, and has meddled with administration to the extent of seriously weakening the disciplinary power of the police commissioner. The patrol force, upon whose satisfactory work the success of police service largely depends, is drawn upon too heavily for manning other arms of the department. There is inadequate coöperation between the detective division and the other branches of the service. Traffic regulation is complicated by the existence of nine independent park police departments, mainly engaged in traffic control, but often operating at cross purposes with the regular traffic division. No suitable system of control records has been installed. The common evil of political favoritism is too often the determining factor in securing special assignments.

That the elimination of such abuses requires radical measures is made abundantly clear. The head of the police department must be given real control of his force. He must be freed from political domination and be given reasonable security of tenure. This will be possible only when public opinion demands a mayor who is sincerely devoted to the purpose for which a police department exists. "The mayor of Chicago, and he alone, can dictate the quality of police administration which the city shall receive."

It is only fair to add that since the publication of *Chicago Police Problems,* a number of far-reaching reforms have been introduced. A police school has been established. The detective force has been brought into a more satisfactory relation with the other divisions of the department. An independent civil service commission has been established, and the director of the survey under review has been invited to aid the department in carrying out other recommendations made by the Citizens' Police Committee.

Students of municipal government in general and of police administration in particular will find this volume of great value. It is upon numerous such detailed investigations that the science of municipal administration must be built. The facts are presented clearly and objectively. The conclusions drawn from them seem inescapable.

ELMER D. GRAPER.

University of Pittsburgh.

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The Government of Metropolitan Areas in the United States. (New York: National Municipal League. 1930. Pp. 403.)

This volume was prepared by Dr. Paul Studenski, under the guidance of a committee of the National Municipal League. The study was made possible by a grant from the Russell Sage Foundation, which has supported the Regional Plan of New York. The work deals largely with the methods of providing governmental integration in American metropolitan areas. These it treats under four heads: inter-municipal arrangements, annexations and consolidations, city-county relations, and special authorities. The treatment is one of systematic description. The methods of organizing, extent of power, and provisions for financial support available under each of these are carefully catalogued.

The four chapters on county relations, for example, analyze the efforts at separation of city and county functions in Baltimore, San Francisco, St. Louis, and Denver, the consolidation effected in Philadelphia, New York, and Brooklyn, and the functional consolidations of Greater New York and Boston. These chapters furnish an abundance of concrete material which it may be hoped will find its way into text-books on municipal government.

The authors hazard few conclusions, save that there is no single answer to the problem and that the methods now being used to meet and adjust individual difficulties are not mutually exclusive. The work makes no pretense at being a definitive treatment of the problem. It is clearly a pioneer effort, or, as its authors modestly put it, "merely an introduction to far more comprehensive studies which the subject will undoubtedly receive in the future." The chief value of the volume lies in the picture that it presents of the variety now existing in approaching the problem.

JOSEPH MCGOLDRICK.

Columbia University.

BRIEFER NOTICES[1]

AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

The Social and Economic Views of Mr. Justice Brandeis, by Alfred Lief (The Vanguard Press, pp. xxi, 419), is a companion volume to Mr. Lief's earlier compilation, *The Dissenting Opinions of Mr. Justice Holmes.* Together they present the concrete foundation upon which rest the reputations of Justices Holmes and Brandeis as the outstanding liberals on the Supreme Court. The volume opens with a brief but

[1] In the preparation of the Briefer Notices, the editor in charge of book reviews wishes to acknowledge the assistance of Dr. G. C. S. Benson, Dr. H. L. Elsbree, Dr. E. P. Herring, and Professor B. F. Wright.

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characteristically illuminating foreword by Charles A. Beard, comprising a biographical sketch of Mr. Justice Brandeis, an appraisal of the man and his work, and some comment upon the circumstances surrounding his appointment. The body of the book contains thirty carefully selected opinions written by Mr. Justice Brandeis and a final chapter bringing together some of his miscellaneous writings before his appointment to the bench. Of the thirty opinions, twenty-four are dissenting opinions, and two are concurring opinions, leaving but four in which he spoke for the Court. They are grouped into six chapters dealing with Labor Problems, Regulation of Business, Public Utility Economics, Guarantees of Freedom, Prohibition and Taxation, and State and Nation. They comprise, of course, merely a collection of samples, but they are shrewdly selected to present the liberal social and economic philosophy which has governed the life and thinking of Mr. Brandeis throughout his entire career. Through them all runs a never failing emphasis upon the facts of modern life, the actual conditions, social and economic, which control its development. There is constant evidence of his profound conviction that the law must serve as an instrument for social welfare in its dealing with these facts. It is this systematic effort upon the part of Mr. Justice Brandeis to relate the law to the realities of human life in modern society that is his greatest service. This volume is valuable for making clear the nature and extent of this service.—ROBERT E. CUSHMAN.

Progress of the Law in the United States Supreme Court, 1929-1930, by Gregory and Charlotte A. Hankin (Legal Research Service, Washington, pp. 483), is an elaborate review of the Court's work during the 1929 term. An introductory chapter deals with recent changes in the Court, discusses at some length the achievements of Chief Justice Taft in the field of judicial administration, comments upon the appointment of Mr. Hughes to succeed him, the rejection of the nomination of Judge Parker, and the appointment of Mr. Roberts. A chapter devoted to problems of administration treats of the handling of the Court's business and urges the writing of brief opinions by the Court in cases in which applications for *certiorari* are denied. The rest of the volume deals with the decided cases in fourteen chapters under such captions as Railroad Problems, Public Utilities, Insurance, Federal Taxation, Labor Problems, Prohibition, and the like. The cases are clearly stated and the opinions are summarized. Occasionally the authors venture a criticism, but there is no attempt to discuss the cases in a thoroughly critical manner. There is no reference to any other comments on the cases such as appear in the law journals, nor is there any studied effort to com-

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pare cases with earlier decisions of the Court. One useful feature of the volume is the information contained about cases, frequently of intrinsic importance, in which applications for *certiorari* are denied by the Court without opinion. The book was published too early to make available the permanent United States citations to the cases. In view of what it contains and aims to do, the volume seems unwieldy and expensive. When one can purchase, with advance sheets, one of the commercially published editions of the Supreme Court reports for $4.50 and the other, with valuable annotations, for $7.50, the present volume does not seem a bargain at $5.00.

A new and revised edition of Professor Arthur N. Holcombe's *State Government in the United States* (pp. xxii, 703) has been issued by the Macmillan Company. The first edition, a pioneer in this field, appeared in 1916. It was revised and brought up to date in 1926 (See this REVIEW, Vol. XXI, No. 2 (1927), pp. 455-457, for review of revised edition). The latest revision consists chiefly in the addition of two entirely new chapters and of adequate lists of references to the current literature of state government and politics. The new chapter, "The People of the States," reflects the interest of students of government in the people of a state as factors in its government, dating back to the *Politics* of Aristotle, but now revived and attacked with the various techniques of statistician, economist, and politico-psychologist. The author emphasizes those influences on state government due to the change of the people from a frontier and rural character to urban. The decline of the state as an independent political society is eloquently evidenced by the author's attention at this point to the significance of regional and other interest-groups transcending its boundaries. The chapter on "Democracy and Administration" is an acknowledgment of the present widespread realization of the necessity for new standards of achievement in public administration. The problems of the proper units for local government, the reconciliation of local autonomy with central state control, and the building of an efficient bureaucracy, responsible at the same time to the people, are given particular attention. That the proposal for a manager form of state government should even be given serious attention is further evidence of the decline, or should we say evolution, of the states —from their proud eminence of "sovereignty" in the Jeffersonian period to that of major administrative units of the nation in 1931. Both chapters are well up to the standard of the original edition of the book.—EARL L. SHOUP.

The Epic of America, by James Truslow Adams (Little, Brown and Company, pp. viii, 433), portrays the "colorful pageant" of this coun-

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try's history and attempts "to discover how we became what we have become." With adroitness and some artistry, the author presents an interesting historical review and traces the influence of the "American dream" upon the nation's development. This national dream has been of "a land in which life should be better and richer and fuller for every man, with opportunity for each according to his ability and achievement." Adams finds this vision affecting the course of our entire growth. He concludes that this dream has been realized more fully in actual life here than anywhere else, though very imperfectly even among ourselves. Asperity and impatience with national weaknesses are replaced by sympathy and understanding to a degree not usual with the author. This general attitude is taken much further in the amusing volume by Simeon Strunsky entitled *The Rediscovery of Jones* (Little, Brown and Company, pp. 215). The author here sets forth a spirited defense of "the man in the street," who has for so long been the unresisting butt for those ridiculing democracy. The book is a welcome antidote to the writings of those critics who view men as either robots, "boobs," or puppets. To those who describe the public as the victims of the tabloids, the advertisers, and the propagandists, the author shows the other side of the picture. Jones goes along with his opinions, his games, and his politics, quite as much swayed by prejudice and tradition as by propaganda. Treating the critics in a jesting satiric fashion, Mr. Strunsky bids "Americans look at their democracy, and, without blinking its faults, rejoice in its powers, its virtues, and its promise." A serious refutation of the critics of American institutions is undertaken by Robert Douglas Bowden in his volume entitled *In Defense of Tomorrow* (The Macmillan Company, pp. 210). The volume was awarded a three-thousand-dollar prize as the best book "on the soul of America" in a contest sponsored by the National Arts Club. The author discusses politics, religion, education, art, literature, and government, analyzing and justifying the American attitude. His broad assertions and generalizations continually stimulated the reader to protest, and rob the book of much of its effectiveness.

To the considerable number of volumes of "readings" on American government already extant has been added a *Documentary Source Book in American Government and Politics* (D.C. Heath and Co., pp. xx, 823), prepared by Professors Cortez A. M. Ewing and Royden J. Dangerfield, of the University of Oklahoma. The materials presented are, in the main, public documents or selections therefrom—constitutions, statutes, judicial decisions, proclamations, reports, and executive orders—but with occasional quotations from books, articles, party literature, and the like.

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Three-fourths of the space is devoted to the national government and the remainder to state government. The task of selection has been performed well, though the compilers are prompt to recognize that no two teachers will quite agree as to what such a book should contain.

The Yale University Press has recently published a second edition of Professor Charles M. Andrews' excellent *Colonial Background of the American Revolution* (pp. x, 220). Very few changes have been made in the original text, but the re-publication of the book was thoroughly desirable; it is by all odds the best and most readable short discussion of the subject. It is divided into four chapters, each of which is a long essay dealing with the changing colonial policy of the British government, with the conditions in the colonies, and with the author's conclusions as to the relative importance of the various factors involved. A review of the first edition will be found in this journal for May, 1925 (Vol. XIX, p. 408).

Horace Liveright, Inc., presents in *The Washington Merry-Go-Round* (pp. 366) a lively volume of political gossip and trivial scandal concerning the official life of the capital. Apparently the anonymous author has had his eye at many key-holes and his ear at the cracks of many doors, and obviously he has made public many little affairs that the participants can scarcely relish seeing in print. The book is written with a staunch "liberal" bias, and is highly critical of the Hoover administration. Hoover, Curtis, Stimson, Dawes, and others are sketched with particular emphasis upon their weaknesses. The personnel of the House and Senate is disposed of and the press corps passed in review. The *Merry-Go-Round* is an entertaining and rather clever bit of mild scandal-mongering.

In his preface to the second impression of *State Rights in the Confederacy* (University of Chicago Press, pp. x, 281), Professor Frank L. Owsley says that although the thesis of the book has not infrequently been challenged since it was first published, he now sees no reason to alter his conclusions. His point of view is that internal dissension was the principal reason for the failure of the "war for Southern independence." A brief review of the book will be found in this journal for February, 1926 (Vol. XX, p. 224).

The Institute for Government Research of the Brookings Institution has added two more studies to its series of service monographs: *The Personnel Classification Board* (pp. x, 160), by Paul V. Betters, and *The United States Shipping Board* (pp. xi, 338), by Darrell Havenor Smith and Paul V. Betters. The usual style of presentation is followed, the au-

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thors describing in turn the history, activities, and organization of the two boards. There are now sixty-four titles in this monograph series.

FOREIGN AND COMPARATIVE GOVERNMENT

In *European Dictatorships* (Brentano's, pp. 252), Count Carlo Sforza, the well known Italian statesman, passes in review the various dictatorships which have arisen in Europe since the World War. He illuminates each of them with deft touches from his large practical experience as well as from his extensive personal knowledge of men and things. In discussing the Spanish dictatorship, Count Sforza points out how fatal it is for a king to adopt such a system of government. A monarch must base his rule either on divine right or on popular sentiment; if he rests it merely on force, he adopts a system which is open freely to any condottieri. Again, in discussing the Polish problem he suggests its most disturbing aspect merely by mentioning that the Russians have not built any permanent stations on their side of the frontier, but have put up wooden shacks which could be taken down and transported elsewhere at any moment. There is not a section of the book which does not contain some such illuminating speculation or fact. At the end of his able analysis, Count Sforza comes to the conclusion that "the very experiment of dictatorships has proved that not only are liberalism and democracy far from having accomplished their mission in the world, but that their work during the nineteenth century was but the beginning of a human liberation of which, by changing methods, they are still to be the instruments." With this conclusion one could hardly fail to agree but for the disturbing remark, appended to it, that when the dictators depart the nations will have to give the new supposedly democratic rulers "unusual powers if they are to safeguard freedom against disorder and anarchy." That may make it more easy to restore the old institutions. But there are signs that this issue is now secondary and completely overshadowed by the social problem. Count Sforza himself points out that the new dictatorships are really less personal dictatorships than mob rule. The only successful ones are those which are trying to organize themselves on the basis of great popular parties. The obvious conclusion would seem to be that in our time dictatorship no longer can serve the ends of personal power unless that power is devoted, or made to appear devoted, to the advancement of social equality. In his natural anxiety for the revival of liberal institutions, Count Sforza has given too little consideration to the social aspect of the problem.—D. MITRANY.

Democracy on Trial (pp. 197, John Lane) is a thoughtful analysis of the faults in the operation of the British government, written by Lord Eustace Percy, president of the Board of Education in the last

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Conservative government. The author propounds a number of definite changes that would enable industry to contribute its share in the solution of governmental problems. He takes the view that industry is the chief instrument of social welfare, and hence should be deliberately used as such by the government. To this end, a technique must be devised for bringing about the voluntary coöperation of business in affairs of state. An "industrial policy of government" must be carried out through capitalistic instruments; "constitutional socialism" has proved its ineptness. The Conservative party must face this task. The forms of government which the nation needs, the author sums up as follows: "A strong executive stripped of petty bureaucratic preoccupations; a House of Commons intent, to the exclusion of all minor issues, on its old function of granting taxation, limited to the present needs of the executive, in return for redress by the executive of present popular grievances; a House of Lords, its membership pruned to efficiency, content to be . . . an aristocratic assembly contributing to the discussion of great issues what Bagehot called 'the aristocratic quality, a certain largeness of field;' an advisory council supplementing Parliament and assisting the executive in the formulation of economic policy by the representation of communal interests and activities." Is Lord Passfield to find Sidney Webb under Lord Percy's mantle? The book, preserving throughout characteristic conservative savor, develops these points in suggestive fashion. —E. P. HERRING.

The Reform Movement in China, 1898-1912, by Meribeth E. Cameron (Stanford University Press, pp. 223), is a detailed study of the plans for the modernization of China drafted by the Imperial government during the last years of the Manchu dynasty. The author has covered all the principal kinds of reform—educational, military, constitutional, financial, etc.—and has used the best sources of information available in English. Her view is that the plans were on the whole wise, and that it is regrettable that they could not have been carried out. She concedes that the Manchus were incapable of carrying them out, even if conditions had been favorable, but underestimates the importance of a favorable morale among the Chinese themselves. It was necessary that the Chinese people should be "born again," a fact which made a revolutionary instead of an evolutionary process of change unavoidable. Miss Cameron apparently would have preferred some easier way of bringing forth a new nation than that which China has followed in the last twenty years. This makes her more sympathetic with the Empress Dowager than most recent writers. The justifiability of such sympathies probably cannot be determined without access to the Chinese archives

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and other sources of information not available in the United States. Despite the limitations of Miss Cameron's materials, her book is a valuable contribution to the literature of the Chinese revolution.—A. N. HOLCOMBE.

In *Rebel India* (New Republic, Inc., pp. xii, 262), Mr. H. N. Brailsford has presented a simple and gripping picture of the problems that beset that unfortunate country. In part, the book is based on a relatively brief visit to India in the latter half of 1930, which enables the reader to catch something of a personal glimpse of the country and its people as seen by an intelligent and sympathetic observer, and in part on the vast literature, official and otherwise, that has sprung up about India in the last few years. That India will be freed from British rule in no great time, Mr. Brailsford assumes to be a certainty which requires no elaborate proof, although a considerable section is devoted to discussion of alternative political machineries and tactics; but he is far from certain that the major ills of India will be met by independence. Naturally enough, his primary concern is for the masses of the Indian people, and his analysis of the history and existing situation of India leads him to doubt whether the victory of Indian nationalism will do more than clear the way for the struggle against the internal social and political evils. When the alien ruler has been overthrown, then the full weight of the Indian masses can, perhaps, be drawn into the ultimately more significant attack upon the usurer, the landlord, and the mill-owner.

Like many detailed descriptions of intrinsically interesting matter, Dr. Margaret Kirkpatrick Strong's *Public Welfare Administration in Canada* (University of Chicago Press, pp. 241), is not altogether free from dullness. In slightly more than 200 pages, the author tries to cover Dominion and provincial activities from jails and immigration to health and poor relief. As a result, there is too much reliance on information scraped out of statutes. But the work is done carefully and on a basis of excellent grounding in public welfare and administration theory. It will add valuable bits to the store of information of the political scientist interested in federalism, grants in aid, poor relief, juvenile delinquency, and similar problems. Students of Canadian culture will find a few items of contrast between British and Latin civilization. The most interesting is the comparison of Ontario's municipal poor relief, which closely corresponds to the local poor relief of England and parts of the United States, with the anarchic subsidizing of sectarian institutions found in Quebec.

Direct Taxation in Austria, by John V. Van Sickle (Harvard University Press, pp. ix, 232), is the first book in the English language that

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deals exclusively with taxation in Austria. The study is limited to one branch of Austria's revenue system—a branch which before the World War yielded approximately one-fourth of the total revenue. It gives an account of the direct taxes (as the term is used in the administrative sense) applied before the war, during the war period, and in republican Austria. Special attention is given to the third period, when important changes were made in the system of direct taxes. The purpose of the study is, in the author's words, "to show how closely the public finances reflect the changing political fortunes of the various classes in the state, and how vitally they affect the production and distribution of wealth." The author's handling of the question of the capital levy in the two closing chapters is especially valuable. His well reasoned conclusion that the capital levy is fallacious seems irrefutable. A helpful bibliography suggesting the materials consulted in the study is included. —M. C. MITCHELL.

Of importance to students of English constitutional history and political development is the publication of the Oxford University Press and University of Minnesota Press, *The Parliamentary Diary of Robert Bowyer, 1606-1607,* which appears this month. The diary, based on two incomplete documents, has been edited by Dr. David Harris Willson, of the University of Minnesota. Dr. Willson pieced together a copy of the diary kept in the British Museum and the original, in Robert Bowyer's own hand, recently discovered by accident in the library of an English nobleman, Lord Braye. Bowyer, who was a member of Parliament and minor office-holder during the reigns of Elizabeth and James I, kept a complete record of events in the House of Commons for the two years covered in his diary. His entries throw much light on the growth of parliamentary procedure, as well as on the beginnings of the conflicts that led to the Civil War.

The Library of Congress has published a *Guide to the Law and Legal Literature of France* (pp. iv, 242), prepared, under the direction of Professor Borchard, by Professor George W. Stumberg, of the University of Texas. As a bibliography, the work is admirable in its thoroughness, arrangement, and indexing; and its critical appreciations, though necessarily brief, evidence careful and intelligent study. There are summary expositions, historical and systematic, of the various topics covered, notably in the sections on the philosophy of law, legal history, private international law, and the codes. Scarcely less important are the pages which deal with constitutional and administrative law, public finance, and taxation. Students interested in any of these subjects will find the *Guide* a useful book.

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Grenzen der Verfassungsgesetzgebung, by Walter Jellinek (Berlin: Julius Springer, pp. 27), is an inaugural lecture delivered at the University of Heidelberg and based essentially on German experience. The author points to what he calls an increasing "autonomy" of constitutional limits, as against the traditional absolute limits of written constitutions.

INTERNATIONAL LAW AND RELATIONS

The personal career of Dr. Hjalmar Schacht, author of *The End of Reparations* (Jonathan Cape and Harrison Smith, pp. 248), is really an epitome of his country's progress in the epoch of reparations. The end of the war found him at the head of a private bank, ably and modestly doing his share to restore Germany's economic life. As part of the great national effort required by the payment of reparations, Dr. Schacht was called to the second highest financial position in the land, as president of the Reichsbank. The tragic tangle which the issue has reached finds Dr. Schacht away from the Reichsbank, having resigned last year, and allied with the forces of Hugenberg and Hitler. It is a bad cause that leads men of Dr. Schacht's sagacity and intellectual honesty into the wilderness of the Nazi movement. The story as told by Dr. Schacht himself, not without restraint, completes in a way what was begun by Mr. Keynes in his now famous book on *The Economic Consequences of the Peace.* What Mr. Keynes prophesied, Dr. Schacht shows to have come true. The result could be predicted, and could not be avoided, because from the outset and continuously the economic nature of reparations was, in Dr. Schacht's words, "plunged into the rapids of political threats." It is not unnatural, therefore, that his conclusions should lead him to urge a return to a rational economic standpoint as the only way of avoiding a final collapse. "Either reparations must be renounced," he says, "or the German people must be enabled to earn reparations. I have already indicated the ways in which that can be accomplished. Germany's European markets can be expanded; she can be enabled to develop her own raw materials if her colonies are returned to her; new markets can be opened to her industrial products." Such a policy could be applied only in the as yet undeveloped countries of eastern Europe, South America, Asia, and Africa, and it could not be applied by any single country. It must represent a joint effort by the leaders of the industrial nations, as the only way of causing international trade again to flow in a normal way. In his final pages, Dr. Schacht goes beyond the problem of reparations and points a warning finger at the whole economic situation. "The solution of this problem is becoming a cardinal problem of the capitalistic system. A capitalism which cannot feed the workers of the world has no right to exist. The

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guilt of the capitalist system lies in its alliance with the violent policies of imperialism and militarism." It is significant that even a man who in his own country now stands among the extreme nationalists should see no way out except through international coöperation. But the whole book is written in a realistic vein and with a knowledge and insight which was but to be expected from a man of Dr. Schacht's standing. The volume will remain indispensable to anyone interested in the subject. It has been made still more useful by the careful translation of Mr. Lewis Gannett, and more attractive by beautiful print and arrangement of the pages.—D. MITRANY.

A useful contribution to the growing literature on international administration is Dr. Keith Clark's *International Communications* (Columbia University Press, pp. 261). The sub-title, "The American Attitude," indicates her approach to the origins and evolution of the Universal Postal Union, the International Telegraph Union, the International Radio Union, and the conferences and convention on submarine cables. Dr. Clark traces briefly the emergence of international coöperative activity in these fields, and develops in some detail the major problems discussed in the various international conferences which have attempted to resolve conflicting national policies as to the different modes of international communication. The author devotes not quite half her space to a summary and analysis of American policy and activities, in relation both to the particular union concerned and to concurrent Pan-American developments in the same fields. The United States has stood pretty consistently for a liberal policy in the realm of communications—a policy clearly to its interest commercially. Both in its absence from the International Telegraph Union and in the policy of the government as to cable monopolies, American influence was on the side of liberal interests. On the other hand, our procrastination in the use of the arbitral machinery of the Universal Postal Union (as in the case of Norway against the United States) and our support of potentially competing Pan-American institutions in these fields have not been altogether satisfactory. Our greatest influence has been in the field of international radio development; and it has been conspicuously effective.—PHILLIPS BRADLEY.

The International Court, by Edward Lindsey (Thomas Y. Crowell, pp. 333), comes at an opportune moment. It is one of the best general introductions to the subject and to the institution available so far. The writer does not spend too much space on theoretical argumentation, but, after a brief sketch of the rise of international law and the growth of an international system, describes with great knowledge and insight the composition and work of the highest international institution evolved so far.

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In the author's opinion, "a review of the work of the Court demonstrates not only that at last we have a true International Court in operation and normal functioning, but that its work is contributing broadly and vigorously to the development and the unification of international law. The upbuilding of an authoritative body of case law of the International Court furnishes an added element of great importance for the development of international law in general. The notion that a code of rules is a prerequisite to the functioning of an International Court is demonstrated to be an erroneous one. . . . Rather is it the case that the existence of the International Court is a most essential prerequisite for the complete development of international law."—D. MITRANY.

Professor W. L. Langer has developed afresh, on the broader and more accurate scale made possible by extensive publication of pertinent documents and well-considered monographs, the rise, prevalence, and destruction of the "Bismarckian system." His book, *European Alliances and Alignments* (Alfred A. Knopf, pp. xv, 509, xiv), "a study of the evolution of the European states system," is among the first post-war productions to abandon primary concern with the causation of the conflict and revert to the calm investigation of international relations. Every page gives evidence of prodigious industry, thoroughness beyond praise, and constant effort to keep economic developments, military considerations, national sentiments, European expansion, and English policy within the frame of the picture. Perhaps the result does not possess as high a degree of novelty, uniqueness, and finality as author and publisher believe, yet the book is a masterpiece. Every well-known incident and phase takes on fresh life and color, and many new facts appear. Bismarck stands forth throughout as the chief actor in the fateful drama, and the keen discussions of his remarkably successful policies are as vivid and original as anything in the book (see, for example, pp. 195, 415, 503). Terse bibliographical notes, rigidly compressed references, and clear diagrams implement further study.—A. H. LYBYER.

"Condensed conversation" would be a good descriptive title for the *Report of the Round Tables and General Conferences at the Eleventh Session of the Institute of Politics* (Institute of Politics). In 263 pages, Editor Buffington tries to summarize what dozens of lecturers and hundreds of arguers spent a month in saying. The result will be valuable to those who wish to revive pleasant memories of last August in the Berkshires and to those who wish to recall the main points of some argument on "Public Opinion and Disarmament," "The Pact of Paris," "The Political Situation in Western Europe," "The Future of the British Commonwealth of Nations," "Social Psychology of International

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Conduct," "The Future of Democracy," "Problems of International Commercial and Financial Policy," "The Distribution of Wealth and Income," "Pending Anglo-Indian Issues," "The Depression and the Way Out." It is certain that a remarkable number of main points have been jammed into this volume, but it is equally certain that those who did not go to Williamstown but want information on any of these subjects would better look for longer accounts. There is much intellectual manna in the discussions of contemporary problems by the brilliant array of professors, politicians, business men, and economists which makes the Institute of Politics a valuable educational experience. But the manna of this book is too condensed to be digestible.

The fourth annual volume of the *Survey of American Foreign Relations* (Yale University Press, pp. xiv, 504) was prepared under the direction of Charles P. Howland, who is now retiring as director of research of the Council of Foreign Relations. The first section (pp. 1-315) on Mexico and the United States affords not merely a survey of recent relations of these countries but an excellent background in text, charts, and statistics for a comprehensive understanding of the political, economic, and religious questions which have of late years agitated Mexico. In the discussion of economic questions, the director was aided by Dr. Herbert Feis, who also wrote the chapter on the Bank for International Settlements (pp. 433-471) of the third section on post-war financial relations. Dr. David W. Wainhouse prepared the timely second section (pp. 319-429) on the limitation of armament as a chapter in world order and coördination. The usual index adds much to this annual, which, unlike some annuals, has a permanent value.

The Oxford University Press has published a collection of documents on *The International Conferences of American States, 1889-1928,* edited with an introduction by James Brown Scott (pp. xliv, 551). We do not possess, in any language, a comprehensive treatment of the Pan-American Union or the Pan-American conferences. Indeed, we do not possess either monograph treatments of individual conferences or adequate documentary records of all of the conferences in accessible form. Hence this collection of documents (conventions, recommendations, resolutions, reports, motions) exhibiting the organization and operations and results of the six conferences from 1889 to 1928 fills a long-felt need. Dr. Scott's introduction must seem unusually penetrating and brilliant, even to those who are quite familiar with his facile pen. The volume constitutes a valuable contribution to our facilities for the study of this American anticipation of a league of nations.—P. B. Potter.

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One of the most important fruits of the lately quickened publishing activities of the Department of State is *Papers Relating to the Foreign Relations of the United States, 1918: Russia,* Vol. I (Govt. Printing Office, 1931, pp. 754). The volume is the first of three that are planned to contain papers relating to Russia in the revolutionary period. Its scope is indicated by the sub-title, "Political Affairs and Diplomatic Relations;" that of the two which are yet to appear, by the titles "Disintegration and Foreign Intervention" and "Economic Relations," respectively. The correspondence, cablegrams, and other materials now made available cover the period from March, 1917, to December, 1918, and comprise an indispensable source of information on the political transformations of the period in Russia and on the attitudes of the American and other governments toward the successive régimes. Because of the defectiveness of many of the communications, through garbling or other reasons, the preparation of the texts has been an arduous task, but it has been performed according to the best standards of scholarship, with doubtful passages duly indicated.

American Participation in the China Consortiums (University of Chicago Press, pp. 198), prepared by F. V. Field for the Institute of Pacific Relations, is the most complete single account that we have of the history and policy of the two consortium agreements. The author has utilized the sources available to piece together a connected story of the conflicting interests—which have been reconciled only partially—in intricate interweaving of official and private arrangements as to Chinese loans. The absence of a biblography and an index is to be regretted.

POLITICAL THEORY AND RELATIONS

Among the recent books dealing with the present economic depression are *The Way Out of Economic Depression* (Houghton Mifflin, pp. xii, 105), by H. F. Arentz; *Le Problème Monétaire d'après Guerre et sa Solution in Pologne, en Autriche, et en Tchécoslovaque* (Recueil Sirey, pp. 303), by M. A. Heilperin; *Papers on Gold and the Price Level* (P. S. King, pp. x, 126), by Sir Josiah Stamp; and *America Weighs Her Gold* (Yale University Press, pp. xiii, 245), by J. H. Rogers. In an unimaginative and inexpert manner, Arentz makes a plea for international bimetallism; the expert will profit little from, and the general reader may be instructed badly by, this volume. Heilperin presents an orthodox treatment of the monetary adventures of three central European countries. His work is painstaking, sound, and well-balanced. Sir Josiah Stamp has learned well the dictum of Cobden: "The fastidiousness which is proper to literature, and which makes a man dread to say the same

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thing twice, is in the field of propagandism mere impotency." Our economic ills are attributed above all to the scarcity of gold, which has brought declining prices and stagnation in industry. Repeated assertions of the charge of sterilization of gold by American banks, even if made by so eminent an author, cannot dislodge us from the position that too much expansion rather than sterilization has been the trouble. In what manner would Stamp reconcile an increase of loans and investments from forty billions in 1922 to fifty-seven billions in 1928 with the charge of sterilization? That we expect so much of Stamp only adds to our disappointment. Professor Rogers' book is to be taken more seriously. The workmanship is of high order, and although the book is semi-popular, the professional economist or the politician would do well to study it. There probably does not exist a more illuminating and courageous statement of the American problem of the balance of payments, particularly in relation to the conflict of protectionist sentiment and the unyielding attitude toward international debts, the quotient of adjustability of each item in the balance of payments, and the ultimate solution of this perplexing problem.—S. E. HARRIS.

Tariffs: the Case Examined, by a committee of economists under the chairmanship of Sir William Beveridge (Longmans, Green and Co., pp. 301), is announced by the authors and publishers to be an expert study written in language "to be understanded of the people." Inasmuch as the conclusions are all opposed to the tariff, recent events in Great Britain lead one to doubt whether the purpose of the authors was fully accomplished. However this may be, the book contains a convincing statement of the futility of the tariff as a remedy for Britain's economic ills. Protection, it is argued, would not bring about higher wages, less unemployment, or better bargaining power. No hope is seen in it as a defense against dumping, or as a solution of the agricultural problem. Imperial preference, revenue tariffs, and the use of quotas and import boards are likewise regarded as dubious measures. At times, the stock free-trade argument is employed, that selfish private interest will lead to the development of those industries for which Great Britain is best fitted, and that the tariff is bad because it interferes with the working of this natural economic law. At other times, the authors seem aware of the fact that the history of the past hundred years has thrown some doubt upon the conclusions of the Manchester school. Maladjustments do occur, and it is possible that governments could ease the strain of transition. In attacking the tariff as the wrong kind of government "interference" in the case of England at the present time, the argument is far more persuasive. The difficulties of tariff-making and the tendency

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of tariffs to endure long after their object has been attained are well stated. Particular stress is placed upon Great Britain's dependence on foreign trade and the tremendous cost which protection would entail.

Unemployment as a World Problem is the title of the 1931 Harris Foundation lectures at Chicago (University of Chicago Press, pp. 261). J. M. Keynes contributes an economic analysis of the depression which centers about the theory that the value of "current investment" must be greater than the "savings" of the public before we can leave the slough of economic despondency. Karl Pribram, of the University of Frankfort, gives a lengthy economic analysis of the causes of unemployment in various countries. The latter is a valuable study of comparative economic conditions, especially interesting to political scientists because of its criticism of the results of governmental efforts to stabilize employment through insurance, the fixing of prices in cartel-controlled industries, and other restrictions on economic activity. In some cases at least, Mr. Pribram points out that such efforts have increased the duration of unemployment through their effect on entrepreneural profits. Mr. E. J. Phelan, of the International Labor Office, concludes the lectures with a series on international coöperation. There is an interesting account of attitudes at the International Labor Conference on Unemployment; an account of the spread and a defense of unemployment insurance; a sketchy summary of international organizational activity on unemployment; and an expression of hope for "international public works."

The theory, if not the practice, of law enforcement is developing rapidly. Leading the several books which it is to be hoped will come out of the Wickersham Commission data is Ernest Jerome Hopkins' *Our Lawless Police* (Viking Press, pp. 361). Mr. Hopkins made for the Commission a survey of police brutality, third degree, and unlawful detention in sixteen American cities. The results, given in this book, are guaranteed to make your blood boil at the savage, criminal-making treatment of suspects by police intent on securing confessions. Except for a possible over-emphasis on constitutional rights, the problem is handled adequately and the suggested remedies are sane. *Criminal Justice in England,* by Pendleton Howard (Macmillan, pp. 409), is a detailed study of the law and practice of English prosecutions, police, and criminal courts. Though not as stimulating or clear as Mr. Moley's writings, the book is valuable as a supplement and a check on the portion of *Politics and Criminal Prosecution* dealing with the British director of public prosecutions. There is more emphasis on personnel and less on central control of prosecution in Howard's work. Irvin Stalmaster's *What Price*

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Jury Trials? is a lawyer-like study of the idiocies and idiosyncracies of the jury system by a Nebraska judge and assistant attorney-general. It is perhaps most important as an addition to the literature of law-enforcement from a man who has a hand at the actual task.

The Administration of Municipally Owned Utilities (Municipal Administration Service, pp. ii, 80) is a summary of the material which the late Dr. Delos F. Wilcox expected to incorporate into a comprehensive book. While this digest is certainly worth the attention of those interested in public regulation and operation of utilities, it shows clearly that students of American government suffered great loss through the inability of Dr. Wilcox to bring his proposed treatise to completion. The comprehensiveness of the proposed work is indicated by an enumeration of only a part of the topics discussed in the thirty-seven chapters of the present pamphlet: relative advantages and disadvantages of public and private ownership and operation; customer and employee ownership as substitutes for public ownership; legal, financial, and practical business problems involved in purchase or construction of utilities; financing of publicly-owned utilities; accounting problems; rate-making; service regulations; personnel control; reporting to the public; taxation; the agency to exercise control of the utility; relation of this agency to other administrative agencies and to the city council; relation of one locally owned public utility to other local publicly owned utilities, to state and national publicly owned utilities, to publicly owned utilities of other cities, and to competing privately owned utilities; and the problem of state regulation of municipally owned utilities.—C. S. HYNEMAN.

In *A Realist Looks at Democracy* (pp. x, 215, Frederick A. Stokes Co.), Alderton Pink undertakes to reveal the shortcomings of democracy, particularly as observed in Great Britain. He labors the point that government should be by the intelligent, that the people are not intelligent, and that therefore democracy is a failure. His treatise is based on the dubious assumption that "what is required at the moment is not so much a discussion of ways and means of securing government by an aristocracy of intelligence as the education of public opinion to the point of producing general agreement that such a government is necessary." It scarcely requires a "realist" to observe the patent fact that people are only too willing to turn to those promising "results" through ways other than the uncertain road of democracy. The incompetency of the common man, the limitations of political education, and the degradation of popular journalism are some of the discoveries the author makes. If Mr. Pink were less self-consciously realistic, he might have more to offer.

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Professor F. W. Taussig has prepared a third edition of *Some Aspects of the Tariff Question* (Harvard University Press, pp. 499), to cover the period 1910 to 1930. The four parts of the earlier editions, dealing with general principles and with the effect of tariffs on the sugar, iron and steel, and textile industries in the United States up to 1910, are substantially unchanged. The new material constitutes an excellent analysis of the working of the tariff with respect to these industries since 1910. In Professor Taussig's own words: "The verdict is almost entirely negative. No changes took place that modify in essential respects the general conclusions reached when this book was published in 1915." Those who are familiar with the earlier editions of this work need not be told that this is a thorough and realistic treatment of the operation of our tariff policies.

Marcus Duffield presents in *King Legion* (Jonathan Cape and Harrison Smith, pp. x, 330) an excellent account of the organization, history, and activities of the American Legion. The author is candidly critical and unsympathetic in his attitude toward this veterans' organization, but he is fair in his treatment and apparently accurate in his statements. His evidence is taken largely from the records of the Legion itself. He accords this body a rôle of great influence in enacting veterans' legislation and produces convincing substantiating material. Judgment as to the Legion's power must remain a matter of individual appraisal; the intangibles involved defy definitive analysis. Still, the viewpoint of the Legion officials and their activities in demanding aid for veterans, in supporting armament, in fostering Americanism, and in fighting pacifists are of great political importance. The author concludes that "the Legion has wrapped the ideas of reactionism and nationalism in star-spangled bunting and labelled them patriotism." *King Legion* is a clear and interesting exposition and appraisal written by one who finds the American Legion a "mighty power" that must be watched and curbed.

The School of Public and International Affairs at Princeton University has made available in printed form the proceedings (pp. 145) of the *Conference on the Press* held April 23-25, 1931. Among the subjects discussed were: the ownership and management of the press, the press in international relations, the press and the radio. Of particular interest is the discussion of the relations between the Washington correspondents and the federal executive offices. Bruce Bliven, David Lawrence, and Paul Y. Anderson were some of the newspaper men participating. The proceedings, while interesting, served to bring forth little new material.

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Municipal Self-Insurance of Workmen's Compensation (University of Chicago Press, pp. 72), by F. Robert Buechner, is the first of a series of "Studies in Municipal Management" made possible by traveling fellowships for city managers awarded by the International City Managers' Association out of a special grant from the Spelman Fund. Mr. Buechner made a case study of compensation insurance for municipal employees in a number of small and medium-sized cities. On the basis of this study, he concludes that all but the smallest cities can make substantial savings by carrying their own insurance, provided proper standards are applied.

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RECENT PUBLICATIONS OF POLITICAL INTEREST

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CHARLES M. KNEIER AND CHARLES S. HYNEMAN
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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GOVERNMENT PUBLICATIONS

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AMERICAN

UNITED STATES

National commission on law observance and enforcement.

Publication 5: Report on enforcement of deportation laws of the United States. iii, 179 p.

This discussion of the deportation laws of the United States and their administration, by Reuben Oppenheimer, is peculiarly timely, in view of the deportation activities of Secretary of Labor Doak.

Publication 7: Progress report on study of Federal courts. vii, 123 p.

Publication 10: Report on crime and the foreign born. iii, 416 p.

Significant in connection with Publication 7, *supra*. Includes a report on crime and criminal justice in relation to the foreign born; by Edith Abbott, with supplementary reports by Alida C. Bowler, Paul S. Taylor, Max S. Handman, Jesse F. Steiner, and Paul L. Warnshuis.

Publication 11: Report on lawlessness in law enforcement. v, 347 p.

This is the much-discussed report on "third degree" methods, by Zechariah Chafee, Jr., Walter H. Pollak, and Carl S. Stern. It constitutes a vigorous indictment of police methods in vogue in many cities.

Publication 12: Report on the cost of crime. iii, 657 p.

Publication 13, v. 1–2: Report on causes of crime. 2 v.

Publication 14: Report on police. iii, 140 p.

These contain rather thorough discussions of the topics enumerated, including the effect of unemployment on crime; social factors in juvenile delinquency; the effect of the community, the family, and the gang on criminality; the cost of crime and criminal justice; conditions under which police departments are operated, etc. There is much bibliographical information.

State Department

The department of state of the United States, Washington: Govt. Ptg. Off., 1931. 97 p.

Contains a wealth of information on subjects pertaining to the State Department which is obtainable only at considerable difficulty from other sources. Gives briefly the functions of each of the divisions of the department; the origin and development of the department; its present organization, including the foreign service, and its methods of coöperation with other departments; and lists publications to date. In the appendix much historical information is given, including the names of all officers down to the chief clerks. Herein can be found also the names of all the principal diplomatic agents of the United States from 1789 to 1931.

Notice to bearers of passports. Washington: Govt. Ptg. Off., 1931. 14 p.

This is a publication of no scholarly value, but of considerable practical use to those who expect to travel in foreign countries. It is divided as follows: I. Miscellaneous information of general interest. II. Expatriation of American citizens and the presumption of cessation of citizenship. III. Status of American citizens in certain countries with which the United States has concluded naturalization treaties. IV. Status of American citizens in certain countries with which the United States has not concluded naturalization treaties.

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STATE

INDIANA

Committee on observance and enforcement of law. Report. Indianapolis, 1931. 56 p.

A feature of this report is the twenty-two pages given over to proposed bills to remedy the conditions found.

NORTH CAROLINA

University of North Carolina. The general strike; a study of labor's tragic weapon in theory and practice, by Wilfrid Harris Crook. Chapel Hill, 1931. 649 p. (Social study series.)

While of primary interest to the economist and sociologist, this monograph will repay study by the political scientist as well.

VIRGINIA

University of Virginia. County management. Second edition. Charlottesville, 1930. 592–658 p.

This is an excerpt from Wylie Kilpatrick's larger work, "Problems in contemporary county government."

FOREIGN AND INTERNATIONAL

CHILE

Ministerio de relaciones exteriores. Memoria sobre los limites entre Chile y Perú de acuerdo con el tratado del 3 de Junio de 1929 . . . por Enrique Brieba. Santiago de Chile, 1931. 3 v.

This three-volume work goes very exhaustively into the boundary question between Peru and Chile. The first volume is devoted to the historical and diplomatic background; the second to geographical and technical calculations; the third to maps and charts.

GERMANY

Reichsregierung. Freiherr vom Stein: Briefwechsel, denkschriften und aufzeichnungen . . . Bearb. von Erich Botzenhart. Berlin, 1931. XXXI, 558 p.

This is the first volume of a projected six-volume edition of the letters of the famous German statesman.

BOLIVIA

Ministerio de relaciones exteriores. Tratados vigentes, 1825–1925. Bolivia, 1925. 3 v.

BRAZIL

Ministerio das relacoẽs exteriores. Collecçao de actos internacionaes. (A numbered treaty series; current number 35.)

CHILE

Ministerio de relaciones exteriores, Departamento diplomático. Tratados, convenciones y arreglos internacionales de Chile. (An unnumbered treaty series in small pamphlet form—one treaty to a pamphlet.)

COLOMBIA

Ministerio de relaciones exteriores. Boletin, segunda epoca, vol. 1, numeros 3a 5. (A special number of the Boletin, containing the treaties and conventions of Colombia from January, 1919, to December, 1930.)

As may be seen from the above publications, a number of the South American nations are systematically publishing the texts of their treaties and conventions,

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either in collected form or regularly as parts of series. As a rule, these may be obtained free upon request from the minister of foreign affairs in each country.

LEAGUE OF NATIONS

The course and phases of the world economic depression. Geneva, 1931. 337 p.

While primarily of economic interest, this study will repay examination by the political scientist.

World Peace Foundation. Key to League of nations documents placed on public sale. 1930. First supplement to Key to League of nations documents, 1920–1929, by Marie J. Carroll. Boston, World Peace Foundation, 1931. 109 p.

While this is not strictly a League publication, it is included here because issued by the sales agents for League publications in this country, and because it is invaluable for anyone who must use the League documents. The introduction deserves careful reading. The most important contribution, however, and one which has long been needed, is the subject index, covering the period 1920 to 1930, and occupying 38 pages of the book.

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